

**Request For Proposal (RFP) Number 7219941
NASPO ValuePoint Master Agreement for Automotive Parts**

**Addendum #1
August 12, 2021**

This notice announces Addendum #1 to the above referenced RFP.

REVIEW ALL ADDITIONS, CHANGES AND ATTACHMENTS IN THIS ADDENDUM CAREFULLY BEFORE PREPARING AND SUBMITTING A PROPOSAL.

The following documents/pages have been modified and the specific changes are in italic, bold, red font. Additions are enclosed in asterisks; deletions are enclosed in brackets:

RFP Section/Attachment	Changes Made
Attachment 13 – Participating States Terms	Terms and conditions added from the State of Vermont.

Addendum #1 is subject to the terms of RFP Section 2.3.8, Addenda; any questions or clarifications are limited to the above-referenced items.

All other terms and conditions of the RFP remain unchanged.

Regards,

Yolanda Tutt
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605
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Phone: (916) 375-4408

IMPORTANT NOTICE TO ALL BIDDERS

Solicitation No. 7219941

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 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/Dispute Resolution
Department of General Services
Procurement Division
Purchasing Authority Management Section
707 Third Street, 2nd Floor South
West Sacramento, CA 95605
Voice: 916 / 375-4587
Fax: 916 / 376-6226



**STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES
PROCUREMENT DIVISION**
in cooperation with



Request for Proposal (RFP) 7219941
**NASPO ValuePoint Master Agreement for
Automotive Parts**

July 19, 2021

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1. SECTION 1 – INTRODUCTION AND OVERVIEW

This Request for Proposal (RFP) is a rebid of RFP number 7219940.

The State of California, Department of General Services, Procurement Division (hereafter referred to as “DGS” or “Lead State”) is requesting proposals for Automotive Parts in furtherance of the NASPO ValuePoint cooperative purchasing program.

1.1 Scope of this Request for Proposal (RFP)

The purpose of this RFP is to establish Master Agreement(s) with qualified Bidder(s) to provide Automotive Parts to the State of California (“Lead State”), participating local governmental agencies defined in Public Contract Code Chapter 2, Section 10298 (a) (b) and 10299 (b), and all NASPO ValuePoint Participating States and 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 government entity because of the collective volume of potential purchases by numerous state and local government entities.

The scope of this RFP includes Automotive Parts in the following categories:

- 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, Struts and Steering
- 17) Wipers/Washers
- 18) Winter Accessories
- 19) General Automotive Parts
- 20) Automotive Repair Shop Supplies, Equipment and Tools

Bidders must bid on all twenty (20) categories to be evaluated for award. Award will be made on an “All or None” basis to the Bidder who scores the highest number of points as described in Section 6, Evaluation. It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, or a single contractor, at DGS’s discretion in

accordance with RFP Section 6, Evaluation. The DGS reserves the right to eliminate any specific category from the final award.

The initial term of Master Agreement(s) resulting from this procurement shall be three (3) years with the option to renew for a two (2) year period or portion thereof.

The use of the Master Agreement(s) shall be non-mandatory for all California state agencies. The awarded Bidder(s) shall permit California state agencies, California local governmental agencies and NASPO ValuePoint Participating States/Entities to participate under the awarded Master Agreements.

1.2 Lead State Contract Administrator

The State of California, Department of General Services, Procurement Division, is the Lead State and issuing office for this RFP and all subsequent addenda.

The DGS Procurement Official and Lead State Contract Administrator is identified below:

Yolanda Tutt
Department of General Services
Procurement Division
707 Third Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605
Phone: (916) 375-4408
Email: Yolanda.Tutt@dgs.ca.gov

All inquiries, questions, and copies of protests must be directed to only this person, unless otherwise identified in this RFP or changed by addendum to this RFP. The Procurement Official shall be the single point of contact for information related to this RFP. Oral communications directly with procurement officers and employees concerning this RFP are discouraged and shall not be binding to the State. Bidders should only rely on written statements issued by the Procurement Official.

Proposal submittals shall be sent per RFP Section 5 to the Proposal Submission E-mail address identified below.

Proposal Submission E-mail: MAU2mailbox@dgs.ca.gov

1.3 Key Action Dates

Key Action Dates are identified below in Pacific Standard Time and may be adjusted via addendum. Key Action Dates after the Submission of Final Proposals are approximate and may be adjusted without addendum to the RFP.

Event/Action	Date
1. RFP Release	7/19/2021
2. Last day to submit written questions for Bidder Conference	7/30/2021
3. Bidder Conference (Webinar) <u>Note</u> : Bidders must register for webinar by emailing Procurement Official listed in RFP Section 1.2	8/3/2021 10:30 AM to 12:00 PM
4. Last day to submit written questions for clarification of RFP	8/10/2021
5. Submission of <u>Final</u> Proposals Due	8/27/2021 by 2:00 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

1.4 Cal eProcure Website

All information regarding this RFP including, addenda, and question and answer sets will be published on the State of California's online portal (Cal eProcure) at the link below:

[RFP 7219941](https://caleprocure.ca.gov/event/77601/7219941) (<https://caleprocure.ca.gov/event/77601/7219941>)

Bidders are responsible for checking this website for updated information.

1.5 NASPO ValuePoint Background Information

NASPO ValuePoint is the cooperative contracting arm of the National Association of State Procurement Officials (NASPO). NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and Political Subdivisions (i.e., colleges, school districts, counties, cities etc.) and other eligible entities (i.e., Non-Profit Organizations, etc.) for all States, the District of Columbia, and territories of the United States. For more information, consult the [NASPO website](http://www.naspo.org) (<http://www.naspo.org>) and the [NASPO ValuePoint website](http://www.naspovaluepoint.org) (<http://www.naspovaluepoint.org>).

1.6 Participating States

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement(s):

- Colorado
- Connecticut
- Hawaii
- Maine
- Maryland
- Montana
- New Mexico
- South Dakota
- Texas
- Utah
- Vermont
- Virginia

Some Participating States noted above provided special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided in **Attachment 13 – Participating States Terms** as a courtesy to Bidders to indicate which additional terms and conditions may be incorporated into the participating addendum of such states after award of the Master Agreement(s).

The DGS will not address questions or concerns or negotiate other states' terms and conditions. The Participating States and other Participating Entities may negotiate terms and conditions directly with the awarded Bidder(s). Other entities may become Participating Entities after award of the Master Agreement(s).

1.7 Anticipated Usage

The following table shows historical usage data from the current NASPO ValuePoint automotive parts portfolios administered by the State of California and the state of Oklahoma for 2017-2019. RFP 7219941 is a rebid of the two portfolios. No minimum or maximum level of sales volume is guaranteed or implied.

NASPO ValuePoint Portfolio	2017 Sales	2018 Sales	2019 Sales	2017-2019 Total Sales
Aftermarket Automotive Parts (Lead State: California)	\$2,349,773	\$2,984,858	\$3,232,979	\$8,567,610
Immediate Need Automotive Parts (Lead State: Oklahoma)	\$14,663,478	\$25,677,808	\$30,347,218	\$70,688,504

1.8 Authority of the RFP and Bidder Admonishment

This RFP is being conducted under the policies developed by the Department of General Services, Procurement Division (DGS-PD) as provided under Public Contract Code (PCC) Sections 10298, 10299, 10300, et seq, and 12125, et seq. This RFP contains the instructions governing the requirements for a proposal to be submitted by interested Bidders, the format in which proposal information is to be submitted, and the material to be included therein. This RFP also addresses the requirements that Bidders must meet to be eligible for consideration, as well as addressing Bidders' responsibilities.

If a Bidder expects to be afforded the benefits of the steps included in this RFP, the Bidder must take the responsibility to:

- Carefully read the entire RFP.
- Ask appropriate questions in a timely manner, if clarification is necessary.
- Submit all required responses, complete to the best of the Bidder's ability, by the required dates and times.
- Make sure that all procedures and requirements of the RFP are accurately followed and appropriately addressed.
- Carefully reread the entire RFP before submitting the proposal.
- Check the RFP 7219941 website, referenced in RFP Section 1.4, for updated information.

1.9 Americans with Disabilities Act (ADA)

To meet and carry out compliance with the nondiscrimination requirements of Title II, Americans with Disabilities Act (ADA), DGS will make every effort to ensure that its programs, activities, employment opportunities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing reasonable accommodation to participate in the procurement process, or for persons having questions regarding reasonable accommodation for the procurement process, please contact the Procurement Division at 916-375-4400 (main office). Procurement Division's TTY/TDD (telephone device for the deaf) and California Relay Service numbers are listed below. You may also directly contact the Procurement Official for this procurement.

IMPORTANT: To ensure that we can meet your accommodation, it is best that we receive your request at least ten (10) business days before the scheduled event (e.g., Bidder conference) or deadline due date for procurement documents.

The Procurement Division TTY telephone number is (916) 376-1891.

The California Relay Service Telephone Numbers are:

- Voice: 1-800-735-2922 or 1-888-877-5379
- TTY: 1-800-735-2929 or 1-888-877-5378
- Speech to Speech: 1-800-854-7784

2. SECTION 2 – RULES GOVERNING COMPETITION

Section 2 of this RFP describes the procurement process. Specific guidelines for the submission of this RFP response are found in RFP Section 5, Proposal Format.

2.2 Identification and Classification of RFP Requirements

2.2.1 Requirements

The DGS has established certain requirements with respect to proposals to be submitted by prospective contractors. The use of "shall," "must," or "will" (except to indicate simple futurity) in the RFP indicates a requirement or condition which is mandatory. A deviation, if not material, may be waived by the DGS. A deviation from a requirement is material if the deficient response is not in substantial accord with the RFP requirements, provides an advantage to one Bidder over other Bidders, 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 DGS and/or ordering agencies. Material deviations cannot be waived.

2.2.2 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.

2.2.3 Mandatory Requirements

All items within this RFP labeled mandatory (M) are non-negotiable. A Pass/Fail evaluation will be utilized for all mandatory requirements in this RFP. Bidder's signature on the form in RFP Section 2.6.5, Signature of Proposal, and submission of proposal response will be considered as Bidder's agreement to all mandatory RFP requirements.

2.2.4 Non-Mandatory Requirements

This RFP may include both preference programs and product/contract performance items identified as non-mandatory (NM) requirements. Bidders are not required to comply with these requirements to be compliant with the RFP. However, if a Bidder applies for a preference, the Bidder must meet the applicable preference requirements and provide the requested preference documentation as outlined within the section requirement.

2.2.5 Scored Requirements

This RFP may include both mandatory scored (MS) and non-mandatory scored (NMS) requirements. Mandatory scored requirements are non-negotiable and will achieve points as identified in RFP Section 6, Evaluation, if the requirement is met.

2.2.6 Narrative Responses

This RFP includes some items that require a narrative response. Those items have been listed on **Attachment 3 – Narrative Response**. Bidders are to input narrative responses on the attachment only and only for the items requested. If necessary, Bidders may add attachments to further explain their response. Bidders shall not input narrative responses within the proposal document, nor should narrative responses be included for items the DGS did not list on **Attachment 3 – Narrative Response**.

2.3 Bidding Requirements and Conditions

2.3.1 General

This RFP, the evaluation of responses, and the award of any resultant contract shall be made in conformance with current competitive bidding procedures as they relate to the procurement of goods and services by public entities in the State of California. A Bidder's Final Proposal is an irrevocable offer for one hundred twenty (120) days from the Submission of Final Proposals date in RFP Section 1.3, Key Action Dates. A Bidder may extend the offer in the event of a delay of contract award.

2.3.2 RFP Documents

This RFP includes, an explanation of the required needs, instructions for the format and content of proposals, and the proposed form of contract between the DGS and the successful Bidder.

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify the Procurement Official in accordance with RFP Section 1.2, Lead State Contract Administrator, in writing and request clarification or modification of the document. Modifications will be made by addenda issued pursuant to RFP Section 2.3.8, Addenda.

If the RFP contains an error known to the Bidder, or an error that reasonably should have been known, the Bidder shall bid at its own risk. If the Bidder fails to notify the DGS of the error prior to the date fixed for submission of proposals, and is awarded the contract, the Bidder shall not be entitled to additional compensation or time by reason of the error or its later correction.

2.3.3 Examination of the Work

The Bidder should carefully examine the entire RFP and any addenda thereto, and all related materials and data referenced in the RFP or otherwise available to the Bidder and should become fully aware of the nature and location of the work, the quantities of the work, and the conditions to be encountered in performing the work.

2.3.4 Questions Regarding the RFP

Bidders requiring clarification of the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions, in an email or envelope clearly referencing subject RFP, to the Procurement Official listed in RFP Section 1.2, Lead State Contract Administrator. To ensure a response, questions must be received in writing by the scheduled date given in RFP Section 1.3, Key Action Dates.

Question and answer sets will be provided to all Bidders without identifying the submitters. Submitted questions should not reveal the name of the requestor. Questions may be paraphrased by the DGS for clarity. Oral answers shall not be binding on the DGS.

A Bidder who desires clarification or further information on the content of the RFP, but whose questions relate to the proprietary aspect of that Bidder's proposal and which, if disclosed to other Bidders, would expose that Bidder'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 RFP Section 1.3, Key Action Dates, to ensure a response. The Bidder must explain why any questions are sensitive in nature.

If the DGS 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 DGS does not concur with the proprietary aspect of the question, the question will not be answered in this manner and the Bidder will be so notified.

2.3.5 Request to Change the Requirements of the RFP

If the Bidder believes that one or more of the RFP requirements is onerous, unfair, or imposes unnecessary constraints to the Bidder in proposing less costly or alternate solutions, the Bidder may request a change to the RFP by submitting, in writing, the recommended change and the facts substantiating this belief and reasons for making the recommended change. Such request must be submitted to the Procurement Official by the date specified in RFP Section 1.3, Key Action Dates.

Failure by any Bidder to raise any concern related to the solicitation requirements or a failure of a referenced internet link by the relevant Key Action Date will be deemed a waiver of any claim regarding the contract award relating to the solicitation requirements.

2.3.6 Bidders' Conference

A Bidders' Conference will be held, during which suppliers will be afforded the opportunity to meet with the DGS Procurement Official and discuss the content of the RFP and the procurement process. Suppliers are encouraged to attend the Bidders'

Conference. The time, date and place of such conference is included in RFP Section 1.3, Key Action Dates.

The DGS may accept oral questions during the conference and will make a reasonable attempt to provide answers prior to the conclusion of the conference. If questions asked at the conference cannot be adequately answered during the discussion, answers will be provided with a published question and answer set on Cal eProcure. Oral answers shall not be binding on the DGS.

2.3.7 Supplier's Intention to Submit a Bid

Not Applicable

2.3.8 Addenda

The DGS may modify the RFP prior to the date fixed for Contract Award by issuance of an addendum. Addenda will be numbered consecutively. In the event that the solicitation is revised by an addendum, the Bidder is required to meet all requirements of the most current addendum, including using any updated forms. If any supplier determines that an addendum unnecessarily restricts its ability to bid, the supplier is allowed five (5) business days to ask a question or request a change.

2.3.9 Bonds

Not Applicable.

2.3.10 Discounts

Cash discounts offered by Bidders for the prompt payment of invoices will not be considered in evaluating offers for award purposes; however, all offered discounts will be taken if the payment is made within the discount period.

Prompt payment discounts will be computed from date of delivery of equipment as specified, or from date correct invoices are received in the office specified by the ordering agency if the latter date is later than the date of delivery.

2.3.11 Joint Proposals

Joint proposals are not acceptable for this solicitation.

2.4 Bidding Steps

2.4.1 General

The procurement process to be used in this acquisition is composed of multiple steps. Refer to RFP Section 1.3, Key Action Dates, to determine which steps are included in this RFP. References in this RFP Section 2, Rules Governing Competition, to steps not included in RFP Section 1.3 are not applicable to this RFP.

The Final Proposal is a mandatory step for all Bidders; all other steps are optional. However, all Bidders are strongly encouraged to follow the scheduled steps of this procurement to increase the chance of submitting a compliant Final Proposal.

2.4.2 Proposals

The DGS desires to obtain proposals that are responsive in every respect. Therefore, the procurement process may include a Draft Proposal and will always include a Final Proposal, as described below.

2.4.3 Draft Proposal

Draft Proposals will not be accepted for this RFP.

Should the DGS declare Final Proposals to be Draft Proposals as described in RFP Section 2.7.3, Errors in the Final Proposals, the DGS may conduct confidential discussions with the Bidders who wish to continue in the bidding process. Notifying the Bidder of defects is intended to minimize the risk that the Final Proposal will be deemed non-compliant; however, the DGS 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 the Final Proposal, if undiscovered defects contained in the declared Draft Proposal are later found in the Final Proposal. Oral statements made by either party during confidential discussions shall not be binding.

2.4.4 Final Proposal

The Final Proposal must be complete, including all cost information, required signatures, contract language changes agreed to in writing and corrections to those defects noted by the DGS in its review of the Draft Proposal if included in this RFP.

2.5 Public Record

Final proposals are public upon posting of Notice of Intent to Award. Bidders should be aware that marking a document "confidential" or "proprietary" will not keep 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. This act requires inspection or disclosure of governmental records to the public upon request unless exempted by law or a court has ordered the State not to release the document.

2.6 Submission of Proposals

The instructions contained herein apply to the Final Proposal.

2.6.1 Preparation

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis

should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

2.6.2 Bidder's Cost

Costs for developing proposals are entirely the responsibility of the Bidder and shall not be chargeable to the DGS.

2.6.3 Completion of Proposals

Proposals must be complete in all respects in accordance with RFP Section 5, Proposal Format. A Final Proposal may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. A Final Proposal must be rejected if any such defect or irregularity constitutes a material deviation from the RFP requirements. The Final Proposal must contain all costs required by the RFP in accordance with RFP Section 4, Cost, and RFP Section 5, Proposal Format. If required in RFP Section 5, Proposal Format, cost data must be submitted under separate cover.

2.6.4 False or Misleading Statements

Proposals which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Bidder, may be rejected. If, in the opinion of the DGS, such information was intended to mislead the DGS in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, it will be the basis for rejection of the proposal.

2.6.5 Signature of Proposal

All Bidders must complete **Attachment 2 – Bidder Certification** and include it with the proposal. The Bidder Certification shall be signed by an individual who is authorized to bind the bidding firm contractually. An unsigned Final Proposal shall be rejected. Acceptable signature options are scanned original and DocuSign. The DGS reserves the right to request an original signature from the Bidder.

2.6.6 Delivery of Proposals

Final Proposals must be submitted no later than the date and time specified in RFP Section 1.3, Key Action Dates. Proposals must be received by the DGS on or before the specified date and time. Bidders are required to deliver proposals to the Procurement Official via Proposal Submission email address listed in RFP Section 1.2, Lead State Contract Administrator.

Final Proposals not received by the date and time specified in RFP Section 1.3, Key Action Dates will be rejected.

Per Section 5, Proposal Format, cost data must be in a separate attachment and clearly labeled. If cost data is not submitted in this manner, the proposal may be rejected. Proposals submitted under improperly labeled documents may be rejected.

2.6.7 Withdrawal and Resubmission/Modification of Proposals

A Bidder may withdraw its Final Proposal at any time prior to the proposal submission date and time specified in RFP Section 1.3, Key Action Dates, by submitting a written notification of withdrawal signed by the Bidder authorized in accordance with RFP Section 2.6.5, Signature of Proposal. The Bidder may thereafter submit a new or modified proposal prior to such proposal submission date and time. Modification offered in any other manner, oral or written, will not be considered. Other than as allowed by law, Final Proposals cannot be changed or withdrawn after the date and time designated for receipt, except as provided in accordance with RFP Section 2.7.3, Errors in the Final Proposals.

2.6.8 Rejection of Proposals

The DGS may reject any or all proposals and may waive any immaterial deviation or defect in a proposal. The waiver of any immaterial deviation or defect by DGS shall in no way modify the RFP documents or excuse the Bidder from full compliance with the RFP specifications if awarded the contract.

2.7 Evaluation and Selection Process

2.7.1 General

Proposals will be evaluated in accordance with RFP Section 6, Evaluation.

2.7.2 Evaluation Questions

During the evaluation and selection process, the DGS may desire the presence of a Bidder's representative for answering specific questions, orally and/or in writing. During the evaluation of Final Proposals, the DGS may ask the Bidder to clarify their submitted information but will not allow the Bidder to change their proposal.

2.7.3 Errors in the Final Proposals

An error in the Final Proposal may cause the rejection of that proposal; however, the DGS may at its sole discretion retain the proposal and make certain corrections.

In determining if a correction will be made, the DGS 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.

If the Bidder's intent is clearly established based on review of the complete Final Proposal submittal, the DGS may at its sole discretion correct an error based on that established intent.

The DGS may at its sole discretion correct obvious clerical errors.

The DGS may at its sole discretion correct discrepancy and arithmetic errors on the basis that if intent is not clearly established by the complete proposal submittal, the Master Copy shall have priority over additional copies, the proposal narrative shall

have priority over the bid, the bid shall have priority over the cost sheets, and within each of these, the lowest level of detail will prevail. If necessary, the extensions and summary will be recomputed accordingly, even if the lowest level of detail is obviously misstated. The total price of unit-price items will be the product of the unit price and the quantity of the item. If the unit price is ambiguous, unintelligible, uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the total price by the quantity of the item.

The DGS may at its sole discretion correct errors of omission, and in the following four (4) situations, the DGS will take the indicated actions if the Bidder's intent is not clearly established by the complete proposal.

- a) If an item is described in the narrative and omitted from the Master Agreement and cost data provided in the proposal for evaluation purposes, it will be interpreted to mean that the item will be provided by the Bidder at no cost.
- b) If a minor item is not mentioned at all in the Final Proposal and is essential to satisfactory performance, the proposal will be interpreted to mean that the item will be provided at no cost.
- c) If a major item is not mentioned at all in the Final Proposal, the proposal will be interpreted to mean that the Bidder does not intend to supply that item.
- d) If a major item is omitted, and the omission is not discovered until after Master Agreement award, the Bidder shall be required to supply that item at no cost.

The determination of whether an item is minor or major is the responsibility of the DGS.

If a Bidder does not follow the instructions for computing costs not related to the Master Agreement (e.g., personnel costs), the DGS may reject the proposal, or at its sole discretion, re-compute such costs based on instructions contained in the RFP.

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 Bidder (if awarded the Master Agreement) or in a requirement of the Bidder to supply a major item at no cost, the Bidder will be given the opportunity to promptly establish the grounds legally justifying relief from its proposal.

IT IS ABSOLUTELY ESSENTIAL THAT BIDDERS CAREFULLY REVIEW THE COST ELEMENTS IN THEIR FINAL PROPOSAL, SINCE THEY WILL NOT HAVE THE OPTION TO CORRECT ERRORS AFTER THE TIME FOR SUBMITTAL.

At the DGS' sole discretion, it may declare the Final Proposal to be a Draft Proposal in the event that the DGS determines that Final Proposals from all Bidders contain material deviations. Bidders may not protest the DGS' determination that all proposals have material deviations. If all proposals are declared noncompliant, the DGS may issue an addendum to the RFP. Should this occur, confidential discussions will be held with Bidders who are interested in continuing to be considered. Each Bidder will

be notified of the due date for the submission of a new Final Proposal to the DGS. This submission must conform to the requirements of the original RFP as amended by any subsequent addenda. The new Final Proposals will be evaluated in accordance with RFP Section 6, Evaluation.

2.8 Award of Contract

Award of contract, if made, will be in accordance with RFP Section 6, Evaluation, to responsible Bidder(s) whose Final 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 DGS.

The DGS reserves the right to determine the successful Bidder either on the basis of individual items or on the basis of all items included in its RFP, unless otherwise expressly provided in the RFP. The DGS reserves the right to modify or cancel in whole or in part its RFP.

2.9 Debriefing

A debriefing may be held after contract award at the request of any Bidder for the purpose of receiving specific information concerning the evaluation. The discussion will be based primarily on the technical and cost evaluations of the Bidder's Final Proposal. A debriefing is not the forum to challenge the RFP specifications or requirements.

2.10 Contractual Information

The Master Agreement to be awarded is included in the RFP as **Attachment 12 – Proposed Agreement including Exhibits A through D** and any alteration by a Bidder will result in rejection of its proposal.

2.11 Award Protest

This solicitation 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 (Alternative Protest Process Regulations). The link to the regulations is: [Alternative Protest Process Regulations](https://www.dgs.ca.gov/OAH/Case-Types/General-Jurisdiction/Resources/Page-Content/General-Jurisdiction-Resources-List-Folder/Laws-and-Regulations/Bid-Protest-Regulations) (https://www.dgs.ca.gov/OAH/Case-Types/General-Jurisdiction/Resources/Page-Content/General-Jurisdiction-Resources-List-Folder/Laws-and-Regulations/Bid-Protest-Regulations).

A Notice of Intent to Award for this solicitation will be publicly posted on the Department of General Services Procurement Division webpage and sent via facsimile to any bidder who submits a written request for notice and provided a facsimile number. DGS/PD webpage link: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Award-Notifications?search=Award%20Notice>.

During the protest period, any participating Bidder may protest the proposed award on the following grounds:

- For major information technology acquisitions – that there was a violation of the solicitation procedures and that the protesting Bidder's bid or proposal should have been selected; or
- 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 RFP must be received (facsimile acceptable) by the Coordinator before the close of business 5 p.m. PST/PDT on the first (1st) working day after issuing the notice of intent, as specified in the RFP. Failure to submit a timely, written Notice of Intent to Protest waives Bidder's right to protest.

Bidder is to send the notice of protest to:

Alternative Protest Process Coordinator/Dispute Resolution
Department of General Services
Procurement Division
Purchasing Authority Management Section
707 Third Street, 2nd Floor South
West Sacramento, CA 95605
Fax: (916) 376-6226

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 ten (10) percent of the contract amount as specified in the solicitation. See California Code of Regulations, Title 1, Section 1418.

2.12 Disposition of Proposals

All materials submitted in response to this RFP will become the property of the State of California and will be returned only at the DGS' discretion and at the Bidder's expense. At a minimum, the Final Proposal shall be retained for official files and will become a public record after the Notification of Intent to Award as specified in RFP Section 1.3, Key Action Dates. However, materials the DGS considers confidential information (such as confidential financial information submitted to show Bidder responsibility) will be returned upon request of the Bidder.

3. SECTION 3 – REQUIREMENTS

This section contains the bidding requirements pertaining to this RFP and will be applicable to the resulting Master Agreement. Bidder's proposal shall meet the needs as defined in this RFP.

Prior to award of the Master Agreement, the DGS must be assured that the Bidder(s) selected have all the resources to successfully perform under the Master Agreement. These include, but are not limited to, personnel in the numbers and with the skills required, equipment of appropriate type and in enough quantity, financial resources sufficient to complete performance under the Master Agreement, and experience in similar endeavors. If, during the evaluation process, the DGS is unable to assure itself of the Bidder's ability to perform under the Master Agreement, if awarded, the DGS has the option of requesting from the Bidder(s) any information that the DGS deems necessary to determine the Bidder's responsibility. If such information is required, the Bidder(s) will be notified and will be permitted approximately five (5) business days to submit the information requested.

Attachment 3 – Narrative Response lists the items to which the DGS requires a narrative response. Bidders are not to include narratives within this section (RFP) or for items where a narrative is not requested. The Bidder must submit required forms with the proposal as specified in RFP Section 5, Proposal Format.

3.1 Proposed Product Categories (M)

This RFP requires a Bidder to provide Automotive Parts in the following categories:

Category	Description
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

Category	Description
16	Suspension, Shocks, Struts and Steering
17	Wipers/Washers
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., cleaning supplies, wrenches, etc.)

By submitting a proposal for this RFP, Bidder agrees to provide Automotive Parts in all 20 categories above to the Lead State, Local Governmental Agencies, Participating States and Entities in accordance with **Attachment 12 – Proposed Agreement**.

Attachment 11 – Cost Workbook contains the cost worksheets that the Bidders shall use to enter category discounts for this RFP. To be considered for award, Bidder must offer a discount for all 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 the customer unless otherwise noted. Bidders are required to complete **Attachment 11 – Cost Workbook** in accordance with RFP Section 4, Cost and submit as part of Volume 2, in accordance with RFP Section 5, Proposal Format.

3.2 Bidder Certification (M)

Bidder must submit completed **Attachment 2 – Bidder Certification** with the proposal. Bidder Certification must be signed in accordance with RFP Section 2.6.5, Signature of Proposal.

3.3 Proposed Agreement (M)

By submitting a proposal for this RFP and signing **Attachment 2 – Bidder Certification**, Bidder agrees to all terms and conditions outlined in the **Attachment 12 – Proposed Agreement and its Exhibits A through D**.

Bidder also agrees to comply with all applicable statutes, rules, regulations and orders of the United States and the State of California.

3.4 Required Narratives (MS)

Bidder must complete **Attachment 3 – Narrative Response** and submit with the proposal in accordance with RFP Section 5, Proposal Format. Bidders are to input narrative responses on the attachment only and only for the items requested. If necessary, Bidders may add supporting documents to further explain their response. Narrative responses will be evaluated in accordance with RFP Section 6, Evaluation.

3.5 Customer References (MS)

Customer references demonstrate to the DGS that the Bidder can provide Automotive Parts and is capable of handling the California state government sector as well as other states' government sectors.

Bidder must submit completed **Attachment 4 – Customer References** with the proposal.

Bidders must provide contact information (including public entity name, contact person, phone number, and email address) for three (3) customer references on **Attachment 4 – Customer References**. Failure to submit a minimum of three (3) customer reference contacts meeting the minimum requirements will result in the proposal being considered non-responsive.

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 Bidder. 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 Bidder is not acceptable.

DGS will contact customer references 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 DGS reserves the right to contact the customer references via phone or email. It is the responsibility of the Bidder to notify their customer references that DGS will be contacting them. Bidders should only submit references that can be contacted and will respond to the DGS within five (5) business days.

Customer References will be scored as specified in RFP Section 6, Evaluation.

3.6 Insurance Requirements (M)

By submitting a proposal to this RFP, Bidder agrees to provide required insurance to DGS within thirty (30) calendar days of the Master Agreement execution. Refer to Section XIII of **Attachment 12 - Proposed Agreement, Exhibit D, NASPO ValuePoint Master Agreement Terms**, for the applicable insurance requirements and coverage limits.

3.7 Secretary of State Certification (M)

If Bidder is a Corporation or a Limited Liability Company, Bidder must provide a California Secretary of State (SOS) certification information on **Attachment 2 – Bidder Certification**, or proof that certification is in process to do business in the State of California. SOS certification must be approved and in "Active" status prior to Master Agreement execution.

In the event of discrepancies between Bidder's name on the submitted RFP response and SOS certification, Bidder's business name as filed with the SOS shall take precedence.

If Bidder is "doing business as", whereas the name under which they operate their business differs from its legal, registered name, provide a Fictitious Business Name (FBN) filing, or proof that the filing is in process, with the proposal. Bidder must provide a valid fictitious business name filing prior to Master Agreement award to be eligible for award under a name that differs from its legal, registered name. If dba is listed on the SOS certification, no FBN is needed.

The DGS reserves the right to request clarification.

3.8 California Civil Rights Laws (M)

Pursuant to Public Contract Code (PCC) Section 2010, any Bidder entering into or renewing a contract over \$100,000 on or after January 1, 2017, shall certify all the following:

- That they are in compliance with the Unruh Civil Rights Act (Section 51 of the California Civil Code).
- That they are 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).

Bidders must submit a completed [California Civil Rights Laws Certification](https://www.dgs.ca.gov/-/media/divisions/pd/acquisitions/solicitation_document_attachments/california_civil_rights_law.pdf) (https://www.dgs.ca.gov/-/media/divisions/pd/acquisitions/solicitation_document_attachments/california_civil_rights_law.pdf) as **Attachment 5** with their proposal.

3.9 California Iran Contracting Act (M)

Pursuant to the Iran Contracting Act of 2010 (Public Contract Code Sections 2200 through 2208 are “the Act”), vendors are ineligible to bid on, submit a proposal for, enter into, or renew any contract with the state for goods or services of one million dollars (\$1,000,000) or more if the vendor engages in investment activities in Iran, as defined in the Act. Prior to submitting a bid or proposal and prior to executing any state contract or renewal for goods or services of one million dollars (\$1,000,000) or more, a vendor must complete and return the attached Iran Contract Act Certification form with their bid response certifying that it is not on the list of ineligible vendors prohibited from doing business with the State of California.

Bidders must submit a completed [Iran Contracting Act Certification](http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_3.pdf) (http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_3.pdf) as **Attachment 6** with their proposal.

3.10 California Darfur Contracting Act (M)

Public Contract Code Sections 10475-10481 applies 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 Department of General Services (DGS) to submit a proposal.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code Section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services (Public Contract Code (PCC) Section 10477(a)), unless written permission from the Director of DGS to bid on this procurement has been granted (PCC Section 10477(b)).

A Bidder must submit a completed [Darfur Contracting Act form](http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_1.pdf) (http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_1.pdf) if their company currently or within the previous three (3) years has had business activities or other operations outside of the United States. Failure to submit this form with their proposal or within five (5) business days from request by the DGS will result in the proposal being considered non-responsive.

If a Bidder has not conducted business outside of the United States in the last three (3) years, this section does not apply.

Bidders must submit their response on **Attachment 2 – Bidder Certification** and include the completed Darfur Contracting Act form as **Attachment 7** if applicable.

3.11 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 Public Contract Code (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).

Bidders must provide their retailer's seller's permit information on **Attachment 2 – Bidder Certification**. A copy of the seller's permit shall be submitted within five (5) business days of written notice by the DGS.

3.12 Payee Data Record (M)

By submitting a proposal to this RFP, Bidder agrees to provide a completed [Payee Data Record \(STD 204\)](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf) (<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>) within five (5) business days of written notice by the DGS or a California state agency. No payment shall be made from a California state agency unless a completed STD 204 has been returned to the awarding agency.

3.13 Federal Debarment, Suspension, Ineligibility, and Voluntary Exclusion (M)

Expenditures from this contract 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.

Bidders must submit the [Federal Debarment Certification form](http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_2.pdf) (http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_2.pdf) within five (5) business days of request from the DGS. Failure to submit this form will result in the proposal being considered non-responsive.

3.14 Prohibition of Delinquent Taxpayers (M)

Public Contract Code Section 10295.4 prohibits the DGS 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 California Department of Tax and Fee Administration (CDTFA), or the Franchise Tax Board (FTB) pursuant to Revenue and Taxation Code Sections 7063 and 19195. Respectively, Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

By submitting a proposal for this RFP, Bidder certifies that it is not included on either the FTB or CDTFA lists found at:

- [FTB List](https://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html) (<https://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/index.html>)
- [CDTFA List](https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm) (<https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm>).

3.15 Subcontractors (M)

If a Bidder proposes the use of a subcontractor for a portion of the Agreement, the Bidder agrees that all requirements will be adhered to and that requirements will apply to subcontractors even if subcontractor concurrence is not specifically defined. All subcontractors must comply fully with the administrative and technical requirements that are applicable with the portion of the work being delegated to the subcontractor.

Bidders awarded a contract are contractually obligated to use the proposed subcontractors for the corresponding work identified unless the DGS agrees to a substitution and it is incorporated by amendment to the Master Agreement. The Contractor must have written agreement from the DGS prior to replacement or substitution of any subcontractor.

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

Bidders proposing use of subcontractors to perform a portion of work under the Master Agreement must complete [Bidder Declaration Form \(GSPD-05-105\)](http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf) (<http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>) and include form as **Attachment 8** with their proposal.

3.16 Notice of Subcontractors (M)

Upon award to a Contractor, notice shall be given by the DGS to the subcontractors listed in the Bidder Declaration Form of their participation in the contract. Notification to the subcontractor by the prime Contractor is encouraged immediately after award of a Master Agreement.

3.17 California Socioeconomic Programs (NM)

This RFP may contain the following socioeconomic requirements and/or optional Bidder preferences and incentives:

- Disabled Veteran Business Enterprise (DVBE) Program Requirements and DVBE Incentive
- Small Business Preference
- Small Business Nonprofit Veteran Services Agencies (SB/NVSA)
- Non-Small Business Subcontractor Preference
- Target Area Contract Preference Act (TACPA) Preference

Bidders are not required to request these preferences and the DGS' denial of these preferences is not a basis for rejection of a Bidder's proposal.

The DGS as part of its evaluation process reserves the right to verify, validate, and clarify all information contained in the bid. This may include, but is not limited to, information from Bidders, manufacturers, subcontractors and any other sources available at the time of bid evaluation. Bidder refusal to agree to and/or comply with these terms, or failure to provide additional supporting information at the request of the DGS 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 DGS will take appropriate corrective action and apply sanctions as necessary to enforce the preference program.

3.17.1 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.

3.17.2 California Small Business Preference

A five percent bid preference is available to Bidders certified as a small business in accordance with Government Code (GC) Section 14835 et seq. If applicable, Bidder must claim the preference by completing the appropriate sections of **Attachment 2 – Bidder Certification** and also complete **Attachment 8 – Bidder Declaration**.

Bidders claiming the small business preference must be certified by California as a small business. Completed certification applications and required support documents must be submitted to the Office of Small Business and DVBE Services (OSDS) no later than 5:00 PM Pacific Standard Time on the bid due date, and the OSDS must be able to approve the application as submitted.

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 \(Title 2, Division 2, Chapter 3, Subchapter 8, Section 1896 et seq.\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IABE101D0D49111DEBC02831C6D6C108E&originationContext=document&transitionType=Default&contextData=(sc.Default))) ([https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IABE101D0D49111DEBC02831C6D6C108E&originationContext=document&transitionType=Default&contextData=\(sc.Default\)\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IABE101D0D49111DEBC02831C6D6C108E&originationContext=document&transitionType=Default&contextData=(sc.Default)))).

Questions regarding certification should be directed to the OSDS at (916) 375-4940 or osdshelp@dgs.ca.gov.

3.17.3 California Small Business Nonprofit Veteran Services Agencies (SB/NVSA)

SB/NVSA prime Bidders 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 percent small business preference. If applicable, Bidder must claim the preference by completing the appropriate sections of **Attachment 2 – Bidder Certification** and complete **Attachment 8 – Bidder Declaration**.

SB/NVSAs claiming the small business preference must possess certification by California prior to the day and time bids are due. Questions regarding certification should be directed to the OSDS at (916) 375-4940 or osdshelp@dgs.ca.gov.

3.17.4 California Non-Small Business Subcontractor Preference

A five percent bid preference is available to a non-small business claiming 25 percent California Certified small business subcontractor participation. If applicable, Bidder must claim the preference by completing the appropriate sections of **Attachment 2 – Bidder Certification** and complete **Attachment 8 – Bidder Declaration**.

3.17.5 California Target Area Contract Preference Act (TACPA) Preference (NM)

Bidders claiming the TACPA preference are encouraged to carefully review the [TACPA forms, requirements, and submittal instructions](https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Policy-Training-and-Customer-Service/Dispute-Resolution-Unit) (<https://www.dgs.ca.gov/PD/About/Page-Content/PD-Branch-Intro-Accordion-List/Policy-Training-and-Customer-Service/Dispute-Resolution-Unit>). Bidders must complete and submit all applicable preference program forms to be considered for a preference.

Questions regarding the TACPA preference should be directed to
TACPA@dgs.ca.gov.

3.18 Commercially Useful Function (CUF) (M)

Suppliers, whether the Bidder or a subcontractor, 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 Master Agreement. 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.

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.

Bidders must describe compliance with CUF requirement for each certified supplier (Bidder or subcontractors) on the [Commercially Useful Function \(CUF\) Worksheet](https://www.dgs.ca.gov/-/media/FC6C6EF221D14DB2BD23864C27DE8A48.ashx) (<https://www.dgs.ca.gov/-/media/FC6C6EF221D14DB2BD23864C27DE8A48.ashx>) for each certified business identified, including the Bidder or subcontractors). If applicable, completed worksheets must be submitted as **Attachment 9** with the Bidder's proposal.

Bidders may be required to submit additional written clarifying information regarding CUF to DGS. Failure to submit the requested written information, as specified, may be grounds for rejection of the proposal.

3.19 DVBE Declaration Form (M)

Bidders and/or subcontractors who have been certified by California as a DVBE (or who have obtained the participation of subcontractors certified by California as a DVBE) must also submit a completed [Disabled Veteran Business Enterprise Declaration Form DGS PD 843](http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf) (http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf). All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form. If applicable, the completed form should be included with the proposal as **Attachment 10**.

3.20 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 DGS reserves the right to audit records (e.g., cancelled checks, work logs, etc.) to verify the SB/DBVE subcontractors are performing the work committed to and being paid accordingly.

The corresponding percent of bid price identified on the Bidder Declaration, represents the percentage of total agreement dollars to be paid to the subcontractor. Example: Bidder commits to 2 percent DVBE subcontractor participation on a Master Agreement with a total

spend of \$1,000,000.00. Bidder shall pay subcontractor a minimum of \$20,000.00 for work performed under the agreement.

4. SECTION 4 – COST

Cost evaluation will be based on the points earned as calculated according to the methodology outlined in RFP Section 6, Evaluation.

Each Bidder's proposal must be in the format outlined in this section. Bidders are advised that failure to comply with the instructions listed in this section, such as submission of incomplete offers or use of alternative pricing structures or different formats than the one requested, may result in the rejection of their proposals for non-responsiveness.

It is imperative that no cost information be included in the body of the proposal. Cost information shall only be submitted in the Final Proposal, Volume 2, in accordance with RFP Section 5, Proposal Format.

4.1 Cost Information Guidelines

Attachment 11 – Cost Workbook contains the worksheets the Bidder shall use to provide RFP cost information. Modifying the structure of the worksheets may disqualify the Bidder. All worksheets must be filled out completely or the proposal will be rejected.

4.2 Quantities

No quantities will be shown in **Attachment 11 – Cost Workbook**, as the DGS has no estimate of the anticipated contract purchase pattern. Actual purchases may vary and the DGS will not guarantee any quantities or dollar value for any Master Agreement(s) resulting from this RFP.

4.3 Pricing/Discount Format

All discount percentages must be whole numbers (e.g., 15%).

4.4 Sales Tax

Sales tax is not to be included in the pricing on **Attachment 11 – Cost Workbook**. If awarded the Master Agreement, sales tax should be added at time of invoicing, if applicable. The sales tax rate applied should be based on the rate of the area where the product is to be delivered.

4.5 Cost Workbook Instructions

Bidder must:

- Download **Attachment 11 – Cost Workbook**, from the RFP 7219941 website, referenced in RFP Section 1.4.
- Rename the file as instructed in RFP Section 5, Proposal Format and save.
- Complete the worksheets as defined in RFP Section 4.6 below

- Submit **Attachment 11 - Cost Workbook** as specified in RFP Section 5, Proposal Format.

4.6 Cost Workbook Completion

Bidder must complete worksheets as follows:

- **Tab 1 (Instructions)** – Bidders do not enter any information in this tab.
- **Tab 2 (Category Discounts)** – Bidder must provide a discount percentage (%) for all 20 categories per the instructions in Attachment 11.

For Categories 1-20, Bidders must enter the Discount percentage (%) off the Manufactured Suggested Retail Price (MSRP)/List Price being offered for that category in the column titled “Percent Discount (%)”.

The Cost Workbook is formulated to automatically calculate the “Average Discount” over all categories which will be used for evaluation purposes in accordance with RFP Section 6, Evaluation.

Note: The discount percentages offered in the proposal are fixed for the life of any resulting Master Agreements including any extensions. However, the Contractor can offer greater discounts at any time during the term of the Master Agreement.

4.7 Cost Submittal

Attachment 11 - Cost Workbook will be submitted separately as specified in RFP Section 5, Proposal Format.

5. SECTION 5 – PROPOSAL FORMAT

These instructions describe the mandatory proposal format and the approach for the development and presentation of proposal data. Format instructions must be adhered to, all requirements and questions in the RFP must be responded to, and all requested data must be supplied.

5.1 Proposal Delivery

Proposals must be delivered by email and received by the date and time specified in RFP Section 1.3, Key Action Dates. Proposals received after this date and time will not be considered; therefore, it is the responsibility of the Bidder to make sure their proposal is received on time.

Proposals shall be submitted as follows:

- Proposals shall be sent to MAU2mailbox@dgs.ca.gov.
- Proposals shall not be sent to any other mailbox.
- Only proposal submissions shall be sent to this mailbox.

- Emailed Proposals should clearly identify in the Subject Line “**Bidder Name - RFP 7219941 Proposal Response**”
- Emailed submissions should not exceed 10 megabytes (MB). The DGS mail server may automatically reject excessively large emails.
- Emailed proposals should contain clearly named files. Refer to RFP Section 5.3.2.
- Emails will not be opened by the Procurement Official until the required proposal submission due date and time.

5.2 Electronic Proposal Submittal Formats

It is the Bidders responsibility to ensure that electronically submitted documents are readable by DGS-PD. Typically, required documents should be submitted in Microsoft Word, Microsoft Excel, or Adobe. To ensure electronically submitted documents are readable, Bidders should submit electronic documents that meet the following standards:

- Microsoft – Office Suite Standard 2010 (Word, Excel, Power Point)
- Microsoft – Office Professional Plus 2010 (Word, Excel, Power Point, Access, OneNote, Publisher)
- Adobe Pro DC

Electronic submissions not compatible with these standards and unable to be read may result in the proposal being rejected. The DGS is not responsible for unreadable, corrupt, or missing attachments.

5.3 Final Proposal Format

The Bidder’s Final Proposal must be submitted in the volumes as described below.

Final Proposals submitted by email shall include two (2) separate attachments for the following:

- Volume 1: Response to Requirements
- Volume 2: Cost Data

Volume 1: Response to Requirements

It is preferred that multiple documents for Volume 1: Response to Requirements, are combined into a single Adobe PDF attachment. All Volume 1 attachments must contain “Volume 1” in the file name. (Example: “Volume 1 – Attachment 2 – Bidder Certification”) Cost information must not be included in any attachments for Volume 1 - Response to Requirements.

Volume 2: Cost Data

Volume 2: Cost Data must be attached separately in Microsoft Excel Format. All Volume 2 attachment must contain “Volume 2” in the file name. (Example: “Volume 2 - Cost”).

Zip Files are discouraged. (Refer to RFP Section 5.2, Electronic Proposal Submittal Formats)

5.4 Final Proposal Content

The content of each required volume is described below. **Attachment 1 – Checklist** is provided as a tool to assist participating Bidders in compiling their final proposal response. Bidders are encouraged to carefully read the entire RFP. The need to verify all documentation and responses prior to the submission of final proposals cannot be over emphasized.

The DGS requests that Bidders do not submit unnecessary documentation to the final proposal. Do not submit **Attachment 12 – Proposed Agreement** and **Exhibits A through D** or **Attachment 13** with the proposal. The DGS expects only documentation which pertains to the requested/required information to be submitted as outlined in the RFP.

5.4.1 Volume 1 - Response to Requirements

This volume must contain all responses to the bidding requirements of the RFP listed below. All applicable forms, except cost data, must be completed and included in this volume. No cost information should be contained in this volume. Bidder should leave blank or put “XXX” in place of any cost figures and percentages related to costs.

MUST BE SUBMITTED WITH BID RESPONSE

Description	RFP Section
Attachment 2 – Bidder Certification	2.6.5 / 3.2
Attachment 3 – Narrative Response	3.4
Attachment 4 – Customer References	3.5
Attachment 5 – California Civil Rights Laws Certification	3.8
Attachment 6 – Iran Contracting Act Certification	3.9

Required with Bid Response only if the Bidder and/or subcontractor is a certified SB/DVBE and/or Bidder is claiming a preference or incentive.

Description	RFP Section
Bidder Declaration GSPD-05-105, If applicable	3.15
Commercially Useful Function (CUF) Worksheets, If applicable	3.18
DVBE Declaration Form (DGS PD 843)	3.19
TACPA Standard Form (STD 830), Manufacturer’s Summary of Contract Activities and Labor Hours Form (DGS/PD 525), Bidder’s Summary of Contract Activities and Labor Hours Form (DGS/PD 526)	3.17.5

May be provided with Bid Response, required within five (5) days after notification from the DGS.

Description	RFP Section
Darfur Contracting Act	3.10
Copy of Seller's Permit	3.11
Payee Data Record	3.12
Federal Debarment Certification Form	3.13

5.4.2 Volume 2 - Cost Data

This volume must contain the completed **Attachment 11 – Cost Workbook** only. Bidders must submit this volume under a separate attachment for emailed submissions and clearly labeled as “Volume 2 - Cost Data for RFP 7219941.”

MUST BE SUBMITTED WITH BID RESPONSE

Description	RFP Section
Attachment 11 – Cost Workbook	3.1 and 4

The electronic copy of Attachment 11 – Cost Workbook should be provided in Microsoft Excel format as the Volume 2 email attachment for emailed proposal submissions (Refer to RFP Section 5, Proposal Format).

6. SECTION 6 – EVALUATION

This section describes how the DGS plans to evaluate the responding proposals and identify the proposals that meet the RFP's objectives. DGS intends to conduct a comprehensive, impartial evaluation of all proposals received.

6.1 Receipt

Each proposal will be date and time marked as it is received and verified that all responses are properly identified. Emails will not be opened by the Procurement Official until the required proposal submission due date and time.

6.2 Evaluation of Final Proposals

6.2.1 Validation Against Requirements

The DGS will check each proposal's Volume 1 – Response to Requirements in detail to determine its compliance to the RFP requirements. If a proposal fails to meet an RFP requirement, the DGS will determine if the deviation is material as defined in RFP Section 2.1.1, Requirements. A material deviation 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.

Only those proposals that are administratively and technically compliant will proceed to the cost evaluation.

Volume 2 - Cost Data shall remain unopened until the evaluation of all technical and administrative requirements is completed. Cost envelopes will only be opened for responsive proposals from responsible Bidders. A public cost opening will be held through Microsoft Teams. All participating Bidders and interested parties shall be notified as to the date and time of the public cost opening and a link to join the Microsoft Teaming meeting will be provided.

6.2.2 Cost Analysis

The required cost forms will be checked for mathematical accuracy. Errors and inconsistencies will be dealt with according to procedures contained in RFP Section 2.7.3, Errors in the Final Proposals.

6.2.3 Evaluation of Requirements

For evaluation purposes, certain requirements have been designated as scored requirements and will be scored in accordance with the criteria contained herein. The DGS will convene a multi-state evaluation team ("Evaluation Team") to review scored requirements. All remaining mandatory requirements are not scored and will be evaluated on a pass/fail basis. A material deviation on a mandatory requirement whether or not it is scored will result in disqualification of the proposal.

6.3 Final Proposal Scoring Criteria

The DGS and Evaluation Team will evaluate and score the responses of each Bidder's Final Proposal to determine a Total Score. The maximum points are 1000 not including applicable preferences and incentives. The Total Score includes two (2) scoring categories:

Scoring Categories	Total Available Points
Non-Cost Score	400
Cost Score	600
Total Score	1000

The DGS will determine the Total Score for each Bidder by aggregating the two (2) scoring categories. Scores will be rounded to two (2) decimal places. Scores will be calculated as described within this section.

6.3.1 Non-Cost Score

This score will be determined by evaluating the Bidder's responses to the Mandatory-Scored (MS) items. The following table summarizes the items that will be used by the DGS to calculate the Non-Cost Score for each Bidder.

The scored categories are:

Scoring Items	Maximum Points Available
Customer References (RFP Section 3.5)	150
Narrative Responses (RFP Section 3.4 and Attachment 3)	250
Total Non-Cost Points available	400

6.3.1.1 Customer References

For evaluation purposes, the DGS will evaluate the rating (provided by the customer reference) as the number of points the Bidder 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 Customer Reference Score will be determined by aggregating the scores for each of the three (3) customer references. It is possible to arrive at a total Customer Reference Score of 150.

The DGS will contact the customer references from Attachment 4 via phone or email. If the DGS contacts a customer reference and they do not respond within the time frame given, the reference will receive zero (0) points. The DGS reserves the right to request further clarification.

6.3.1.2 Narrative Responses

Narrative response scores will be based on responses to Mandatory Scored (MS) requirements listed in **Attachment 3 – Narrative Responses** and calculated based on the following components:

MS Requirements from Narrative Responses (Attachment 3)	Maximum Points Available
Electronic Catalog Capabilities	100
Pricing Accuracy	50
Retail Sales Establishments	100
Total Narrative Points	250

The Evaluation Team will rate each of the responses based on the rating table below. Evaluator ratings will be averaged to determine an average rating per Bidder. Bidder's average rating will be divided by the available rating to determine the percentage of awarded points. The percentage will be multiplied by the number of points available to determine the Bidders' 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

Example:

- For *Electronic Catalog Capabilities* the Average Evaluator Rating is 50
- Average Rating (50) / maximum available rating (100) = Percentage of Points (50%)
- Percentage of Points (50%) X total points available (100) = 50
- Bidder will receive 50 points for *Electronic Catalog Capabilities*.

6.3.2 Cost Score Calculation

The Cost Score represents 60 percent of the total points available. **Attachment 11 – Cost Workbook** will be used to determine the Cost Score. The maximum Total Cost Score is 600 points.

The Cost Score will be calculated based on the following components:

Scoring Items	Maximum Points Available
Average Discount (Attachment 11 – Cost Workbook)	600
Total Cost Points available	600

The “Average Discount” from the Cost Workbook will be scored using the following methodology:

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

Example:

Bidder	Average Discount Percentage
Bidder 1	24%
Bidder 2	30%
Bidder 3	22%
Bidder 4	10%

Bidder 2 has the highest Average Discount.

Step Two: For each Bidder's Average Discount, use the highest discount as the DENOMINATOR and the respective Bidder's "Average Discount" as the NUMERATOR.

Example:

Bidder	<u>Lowest Total (NUMERATOR)</u> Respective Bidder Total (DENOMINATOR)	Cost Factor
Bidder 1	$\frac{24\%}{30\%}$	= 0.8000
Bidder 2	$\frac{30\%}{30\%}$	= 1.0000
Bidder 3	$\frac{22\%}{30\%}$	= 0.7333
Bidder 4	$\frac{10\%}{30\%}$	= 0.3333

These results are referred to as the Cost Factor.

Step Three: Multiply each Bidder's Cost Factors by the points available to obtain the Bidder's score for that Cost Score Component.

Example:

Bidder	Cost Factor for Percentage Discount (a)	Total Cost Maximum Points Available (b)	Score for Item (a x b)
Bidder 1	0.8000	600	480
Bidder 2	1.0000	600	600
Bidder 3	0.7333	600	439.98
Bidder 4	0.3333	600	199.98

The Bidder's Cost Score Component scores will be totaled to determine the Total Cost Score for each proposal.

6.3.3 Total Score

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

Example:

Bidder	Non-Cost Score (a)	Cost Score (b)	Total Score (a + b)
Bidder 1	390	480	870
Bidder 2	340	600	940
Bidder 3	400	439.98	839.98
Bidder 4	350	199.98	549.98

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

6.3.4 Small Business Preference Calculation

If the Small Business (SB) preference is to be applied to a California-certified Small Business' 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 Bidders who qualify for this preference.

6.3.5 TACPA Preference Calculations

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

6.4 Selection and Award

The Master Agreement will be awarded to the responsive and responsible Bidder with the highest Total Score, including all applicable preference points.

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

If award is made to more than one Bidder, California state agencies will have the authority to select any Contractor.

6.5 Negotiations

The DGS may elect to enter into negotiations pursuant to Public Contract Code §6611, if conditions exist. Should the DGS elect to enter into negotiations:

- a) DGS will notify Bidders that will be selected to participate in negotiations and issue an addendum to the RFP.
- b) All Bidders participating in negotiations shall be informed of the criteria to be selected for award.
- c) An unsuccessful Bidder shall have no right to protest the results of the negotiating process but may file a petition for a writ of mandate in accordance with Section 1085 of the Code of Civil Procedure.

7. SECTION 7 – DEMONSTRATION

For the purpose of this RFP, demonstrations will not be required.

8. SECTION 8 – ATTACHMENTS

The following list identifies the applicable attachments for this RFP:

- Attachment 1 – Checklist**
- Attachment 2 – Bidder Certification**
- Attachment 3 – Narrative Response**
- Attachment 4 – Customer References**
- Attachment 5 – California Civil Rights Laws Certification (DGS OLS 04)**
- Attachment 6 – Iran Contracting Act Certification**
- Attachment 7 – Darfur Contracting Act Certification**
- Attachment 8 – Bidder Declaration GSPD-05-105**
- Attachment 9 – CUF Worksheet, If applicable**
- Attachment 10 – DVBE Declaration Form (DGS PD 843)**
- Attachment 11 – Cost Workbook**
- Attachment 12 – Proposed Agreement**
 - Exhibit A: Scope of Work
 - Exhibit B: Category Discounts
 - Exhibit C: State of California General Provisions
 - Exhibit D: NASPO ValuePoint Master Agreement Terms
- Attachment 13 – Participating States Terms**

Request For Proposal (RFP) 7219941

ATTACHMENT 1 - CHECKLIST

A complete Proposal or Proposal package consists of the items identified below.

Complete this checklist to confirm the items in your Proposal package. Place a check mark "✓" or "X" next to each item that you are submitting to DGS-PD.

Do not submit the **Attachment 12 - Proposed Agreement and Exhibits A through D**, Participating State terms identified in **Attachment 13**, company advertisements, brochures, informational pamphlets or any other document.

ATTACHMENT NAME/DESCRIPTION

VOLUME 1: Response to Requirements

- ☐ Attachment 1 – Checklist, *optional*
- ☐ Attachment 2 – Bidder Certification – REQUIRED
- ☐ Attachment 3 – Narrative Response – REQUIRED
- ☐ Attachment 4 – Customer References – REQUIRED
- ☐ Attachment 5 – California Civil Rights Laws Certification (DGS OLS 04) – REQUIRED
- ☐ Attachment 6 – Iran Contracting Act Certification – REQUIRED
- ☐ Attachment 7 – Darfur Contracting Act Certification, *If applicable*
- ☐ Attachment 8 – Bidder Declaration GSPD-05-105, *If applicable*
- ☐ Attachment 9 – Commercially Useful Function (CUF) Worksheets, *If applicable*
- ☐ Attachment 10 – DVBE Declaration Form (DGS PD 843), *If applicable*
- ☐ Fictitious Business Name Filing, *If applicable*
- ☐ Copy of Seller Permit, *Upon request*
- ☐ Payee Data Record (STD 204), *Upon request*
- ☐ Federal Debarment Form, *Upon request*

VOLUME 2: Cost (separate attachment/envelope)

- ☐ Attachment 11 – Cost Workbook – REQUIRED

NOTE: The DGS does not guarantee that this checklist is comprehensive. Use of this checklist does not absolve Bidders from reading the entire RFP nor will it excuse Bidders of any obligations set forth in this RFP. Refer to RFP Section 5 for details.

ATTACHMENT 2 BIDDER CERTIFICATION

Attachment 2 must be signed and returned along with the entire proposal per RFP Section 2.6.5, Signature of Proposal. Only an individual who is authorized to bind the proposing firm contractually shall sign this document.

By signing below, Bidder certifies the following:

- All-inclusive Proposal is submitted in a sealed envelope marked in accordance with RFP Section 5, Proposal Submittal.
- All required attachments are included with this certification sheet.
- Compliance with all the requirements, terms, and conditions of the RFP.
- Authorization to verify this certification.
- Proposal is a firm offer for a 120-day period.
- An unsigned Proposal is cause for rejection.

Required Information	Bidder Response
1. Company Name	
2. Address	
3. Telephone Number	
4. Email	
5. Name (Print)	
6. Title	
7. Signature	
8. Date	
9. Employer and/or corporation Federal Employer ID number. (FEIN)	
10. Organization type: Sole Proprietor, Partnership, Corporation, or Limited Liability Company	
11. California Secretary of State Business Entity Certification number (RFP Section 3.7)	

Required Information	Bidder Response
12. California Department of Tax and Fee Administration Retailer's Seller Permit number. (RFP Section 3.11)	
13. Are you a certified Small Business (SB) with the Department of General Services (DGS), Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) and claiming the small business preference? Yes/No response only. (RFP Section 3.17.2)	
14. If 13 above is "Yes", enter your Small Business certification ID number.	
15. Are you a non-small business claiming at least twenty-five percent (25%) small business subcontractor preference? Yes/No response only. (RFP Section 3.17.4)	
16. Are you a certified Disabled Veteran Business Enterprise (DVBE) with the OSDS? Yes/No response only.	
17. If 16 above is "Yes", enter your DVBE certification ID number.	
18. Are you planning to utilize subcontractors for this Agreement? Yes/No Response only.	
19. If 13, 15, 16, or 18 above is "Yes", complete and return the Bidder Declaration Form, GSPD-05-105 (Attachment 8) with your proposal. If applicable, complete and return the DVBE Declaration Form (DGS PD 843) (Attachment 10) with your proposal. (RFP Section 3.19)	<i>Attach applicable forms.</i>
20. If your SB or DVBE certification is pending, enter the date your application was submitted to OSDS.	
21. Has your company conducted business outside of the United States in the last 3 years? Yes/No Response only. If "Yes", submit the Darfur Contracting Act form (RFP Section 3.10).	

Completion Instructions for BIDDER CERTIFICATION

Complete the numbered items on the Bidder Certification by following the instructions below.

Item Numbers	Instructions
1	Enter your company's legal business name. If using a dba, submit a Fictitious Business Name Statement. Refer to California Business and Professions Code 17900 et seq.
2	Must be completed. This item is self-explanatory.
3	Enter the telephone number of the individual signing the Bidder Certification.
4	Enter the email address of the individual signing the Bidder Certification.
5	Enter the name of the individual signing the Bidder Certification in accordance with RFP Section 2.6.5, Signature of Proposal.
6, 7, & 8	Must be completed. These items are self-explanatory.
9	Enter your federal employer tax identification number.
10	Enter "Sole Proprietorship", if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership, corporation, or limited liability company. The sole proprietor is solely liable for all the debts of the business. Enter "Partnership", if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit. Enter "Corporation", if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Enter "Limited Liability Company", if your firm is a limited liability company. A limited liability company is a corporate structure whereby the members of the company are not personally liable for the company's debts or liabilities.

Item Numbers	Instructions
11	Enter your entity number assigned by the California Secretary of State's Office. This information is used to verify if an entity is in good standing and qualified to conduct business in California.
12	Enter your California Department of Tax and Fee Administration Retailer's Seller Permit number.
13	If you are certified as a Small Business (SB) and claiming the preference, enter "Yes". If not certified, enter "No".
14	If you answered "Yes" to 13, enter your SB certification number.
15	If you are a Non-Small Business committing to the use of 25% Certified Small Business Subcontractor Participation, enter "Yes". If not, enter "No".
16	If you are certified as a Disabled Veterans Business Enterprise (DVBE), enter "Yes". If not certified, enter "No".
17	If you answered "Yes" to 16, enter your DVBE certification number. Complete and return the DVBE Declaration Form (DGS PD 843) with your proposal as Attachment 10. (RFP Section 3.19)
18	If you are planning on utilizing subcontractors for this Agreement, enter "Yes". If no, enter "No".
19	If you answered Yes to questions 13, 15, 16 or 18, complete and return the Bidder Declaration form, GSPD-05-105 (Attachment 8) with your proposal. If applicable, complete and return the DVBE Declaration Form (DGS PD 843) with your proposal as Attachment 10. (RFP Section 3.19)
20	If your SB or DVBE certification is pending, enter the date your application was submitted to OSDS.
21	If your company conducted business outside of the United States in the last 3 years, enter "Yes" and submit the Darfur Contracting Act form (RFP Section 3.10). If not, enter "No".

ATTACHMENT 3 NARRATIVE RESPONSE

Bidder Name: _____

Complete responses in the table below and submit with proposal as **Attachment 3**.
Refer to RFP Section 3.4 for more information..

NARRATIVE QUESTIONS:
1. Electronic Catalog Capabilities (MS) – Describe your firm’s ability to provide an Electronic Catalog for this Agreement, meeting the requirements outlined in Exhibit A, Scope of Work, Section 6.B, Electronic Catalog. Response should include: • How Purchasing Agencies will be able to access catalog • Search and product comparison functionality. • Features of quote-generation and online ordering functionality • How promotional pricing is shown on the Electronic Catalog. • How Purchasing Entities can verify MSRP pricing and category discounts applied.
<i>Bidder Response:</i>
2. Pricing Accuracy (MS) – Describe how Contractor will ensure Purchasing Entities will receive, Master Agreement category discounts, or promotional pricing, whichever is lower., on the electronic catalog and at Retail Sales Establishments.
<i>Bidder Response:</i>
3. Retail Sales Establishments (MS) – Describe your firm’s ability to provide Retail Sales Establishments, meeting the requirements outlined in Exhibit A, Scope of Work, Section 6.D, Retail Sales Establishments.. Response should include.: • Description of nationwide Retail Sales Establishments, including those available for Participating States listed in RFP Section 1.6.. • Walk-in and will-call systems. • How customer service associates will support walk-in and will-call order system.. • What information is provided on sales receipts for walk-in and will-call transactions.. • How personnel are trained to ensure performance of this Agreement
<i>Bidder Response:</i>

4. Distribution Plan (M) – Provide a detailed written plan for distribution of the products.. The plan must clearly show distribution from the manufacturer to the end user, including all points in between specific to this resulting Master Agreement only, 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, DVBE and/or Small Business participants, involved in the execution of this Master Agreement and their responsibilities..

Bidder Response:

5. Contractor Contract Manager (M) – Provide contact person, include phone number and email, for Master Agreement management purposes. (Refer to Exhibit A, Scope of Work, Section 6.1.3).

Bidder Response:

6. Contractor Reporting Contact (M) – Provide contact person, include phone number and email, responsible for submitting NASPO ValuePoint Summary and Detail Usage Reports per Section 7 of Exhibit D, NASPO ValuePoint Master Agreement Terms..

Bidder Response:

ATTACHMENT 4 CUSTOMER REFERENCES

Bidder Name: _____

Provide contact information for three (3) customer references in the tables below and submit with proposal as **Attachment 4**. Refer to RFP Section 3.5 for more information.

Customer Reference #1	Bidder Response
Customer Reference (Public Entity) Name	
Contact Name	
Telephone Number	
Email	
Order Date/Period	
Total Order Value	

Customer Reference #2	Bidder Response
Customer Reference (Public Entity) Name	
Contact Name	
Telephone Number	
Email	
Order Date/Period	
Total Order Value	

Customer Reference #3	Bidder Response
Customer Reference (Public Entity) Name	
Contact Name	
Telephone Number	
Email	
Order Date/Period	
Total Order Value	

ATTACHMENT 5 CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Complete the [California Civil Rights Laws Certification](#) (DGS OLS 04) and submit with your proposal as **Attachment 5**.

(<https://www.dgs.ca.gov/-/media/Divisions/OLS/Forms/CALIFORNIA-CIVIL-RIGHTS-LAWS-ATTACHMENT.pdf>)

Refer to RFP Section 3.8 for more information.

ATTACHMENT 6 IRAN CONTRACTING ACT CERTIFICATION

Complete the [Iran Contracting Act Certification](#) and submit with your proposal as **Attachment 6**.

(http://www.documents.dgs.ca.gov/dgs/FMC/GS/PD/PD_3.pdf)

Refer to RFP Section 3.9 for more information.

ATTACHMENT 7 DARFUR CONTRACTING ACT CERTIFICATION

Complete the [Darfur Contracting Act Certification](#) as needed and submit with your proposal as **Attachment 7**.

(<https://www.dgs.ca.gov/-/media/Divisions/PD/Acquisitions/Solicitation-Document-Attachments/Darfur-Contracting-Act.pdf>)

Refer to RFP Section 3.10 for more information.

ATTACHMENT 8 BIDDER DECLARATION

Complete the [Bidder Declaration Form](#) GSPD-05-105 as needed and submit with your proposal as **Attachment 8**.

(<http://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspd05-105.pdf>)

Refer to RFP Section 3.15 for more information.

ATTACHMENT 9 COMMERCIALLY USEFUL FUNCTION (CUF) WORKSHEET

Complete the [Commercially Useful Function \(CUF\) Worksheet](#) for each certified supplier (Bidder or subcontractors) and submit with your proposal as **Attachment 9**.

(<https://www.dgs.ca.gov/-/media/FC6C6EF221D14DB2BD23864C27DE8A48.ashx>)

Refer to RFP Section 3.18 for more information.

ATTACHMENT 10 DVBE DECLARATION FORM

Complete the [Disabled Veteran Business Enterprise Declaration Form DGS PD 843](#) as needed and submit with proposal as **Attachment 10**.

(http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_843.pdf)

Refer to RFP Section 3.19 for more information.

ATTACHMENT 11 COST WORKBOOK

Complete the Cost Workbook per RFP Section 4 and submit with your proposal per RFP Section 5, Proposal Format as **Attachment 11**.

Cost Workbook is available on the [RFP 7219941 website](#) (<https://caleprocure.ca.gov/event/77601/7219941>).

Refer to RFP Section 4 and RFP Section 5 for more information.

ATTACHMENT 12 PROPOSED FORM OF AGREEMENT

Attachment is posted on the [RFP 7219941 website](#) (<https://caleprocure.ca.gov/event/77601/7219941>).

Refer to RFP Section 2.10 and 3.3 for more information.

Note: Do not submit this Attachment with your proposal.

ATTACHMENT 13 PARTICIPATING STATES TERMS

Attachment is posted on the [RFP 7219941 website](https://caleprocure.ca.gov/event/77601/7219941)
(<https://caleprocure.ca.gov/event/77601/7219941>).

Refer to RFP Section 1.6 for more information.

Note: Do not submit this Attachment with your proposal.

ATTACHMENT 11 - COST WORKBOOK

Instructions:

Bidders shall complete this Cost Workbook per RFP Section 4 - Cost. This Cost Workbook must be submitted as part of the Bidder's Final Proposal, Volume 2.

Tab 2 - Enter information in yellow boxes only. Bidders 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 Cost Workbook in any way, except to enter the required information in the yellow boxes only.

End of Worksheet. Go to next Tab.

ATTACHMENT 11 - COST WORKBOOK**Instructions:**

- Bidders must enter information in yellow boxes only.
- Bidders must enter their Legal Business Name below.
- Bidders must enter the Percent Discount (%) for each of the twenty (20) categories below per RFP Section 4.
- Discounts provided must be in whole numbers (e.g., 50%).

Bidder Name:

CATEGORY	DESCRIPTION	PERCENT DISCOUNT (%)
1	AIR CONDITIONING	0%
2	ALTERNATORS AND STARTERS	0%
3	BATTERIES	0%
4	BEARING, BALL AND ROLLER	0%
5	BELTS AND HOSES	0%
6	BRAKES	0%
7	ELECTRICAL AND IGNITION	0%
8	EMISSIONS, SENSORS AND EXHAUST	0%
9	ENGINE AND DRIVE TRAIN	0%
10	FILTERS, OIL, GAS, AIR AND TRANSMISSION	0%
11	GASKETS AND SEALS	0%
12	HEATING AND COOLING (ENGINE)	0%
13	LAMPS, LIGHTING AND MIRRORS	0%
14	OILS, CHEMICALS, FLUIDS AND LUBRICANTS	0%
15	PUMPS, FUEL AND WATER	0%
16	SUSPENSION, SHOCKS, STRUTS, AND STEERING	0%
17	WIPERS/WASHERS	0%
18	WINTER ACCESSORIES	0%
19	GENERAL AUTOMOTIVE PARTS (Aftermarket Automotive Parts not included in Categories 1-18.)	0%
20	AUTOMOTIVE REPAIR SHOP SUPPLIES, EQUIPMENT AND TOOLS (e.g. cleaning supplies, wrenches, etc.)	0%
Average Discount (for evaluation purposes)		0%

End of Workbook.

Request for Proposal (RFP) 7219941 ATTACHMENT 12 - PROPOSED FORM OF AGREEMENT

The Request for Proposal (RFP) proposed form of agreement is the State of California Standard Agreement (STD 213). Please review the [State of California Standard Agreement](http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std213.pdf). (<http://www.documents.dgs.ca.gov/dgs/fmc/pdf/std213.pdf>).

Upon award, the following sections will be updated as noted:

Section	Updates Upon Award
1	Contracting agency name, Department of General Services and Contractor's name, awardee from RFP 7219941
2	Term of the awarded agreement including start and end dates.
3	The maximum amount of the awarded agreement. For this RFP, the awarded amount will be zero dollars.
4	Additional documents made part of this agreement including but not limited to: Exhibit A: Scope of Work, Exhibit B: Category Discounts, Exhibit C: Lead State General Provisions, Exhibit D: NASPO ValuePoint Master Agreement Terms, and any additional Exhibits or attachments as needed.

Provisions in the final agreement that will be modified by DGS to reflect contractor's award are noted in brackets "{}".

Important Note: Bidders may not alter information in Attachment 12 or its Exhibits A through D. Do not submit this attachment or Exhibits A through D with the proposal.

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by {Contractor} hereinafter referred to as the “Contractor,” for the State of California hereinafter referred to as the “Lead State” and all other Participating States and Entities, for the Automotive Parts Master Agreement (“Agreement” or “Master Agreement”).

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, 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.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

- A. Contractor shall meet all requirements identified in this Agreement.
- B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
- C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
- D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.
- E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	Automotive Parts Electronic Catalog Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. 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.
2.	Electronic Catalog/Contract Website Contents The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available 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.
3.	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 Participating States or Entities.

C. Pricing

Item	Description
1.	Category Discounts Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the 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.
2.	Promotions Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, 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.

D. Retail Sales Establishments

Item	Description
1.	Retail Sales Establishments 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 to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions. • Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county

Item	Description
	or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	Ordering Methods 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 this Master Agreement. • Facsimile – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • U.S. Mail – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • Over-the-counter/Walk-In – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • Online (internet) – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.

Item	Description
2.	Purchase Execution California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI\$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	Minimum Order (M) There is no minimum order.
4.	Order Acknowledgement The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile 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
5.	Out-of-Stock Remedy Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order 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.

Item	Description
6.	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.
7.	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.

F. Delivery

Item	Description
1.	Delivery Locations Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	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.
3.	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 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	Security Requirements for Institutions Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	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 ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities 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 cost shall be paid by the Contractor.
6.	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. These 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 this Master Agreement. For all items ordered, warranty begins on the date of delivery.

This document is not required to be submitted with final proposal.

Item	Description
7.	Return Policy Items purchased under this 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 facsimile or e-mail.
8.	Credit Policy The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	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.

G. Invoicing and Payment

Item	Description
1.	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: • Agency 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 • 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
2.	Payment California state agencies and local government agencies 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 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	State of California CAL-Card Invoicing For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as “paid by CAL-Card”.

H. Reporting

Item	Description
1.	Usage Report (Lead State) During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • 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 • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. 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

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	Participating State/Entity Reporting Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	NASPO ValuePoint Summary and Detail Usage Reports Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	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 delivered to the Lead State on a monthly or quarterly basis.
5.	Lead State Administrative Fee Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	NASPO ValuePoint Administrative Fee Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	Participating Entity Administrative Fee If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	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, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	Lead State Contract Administrator The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	Contractor Contract Manager Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	Changes in Contract Manager Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	Contractor Name Change An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	Customer Service Unit Contractor will have a customer service unit that supports this Master Agreement. 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 that: • 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.

J. Transition / End of Agreement

Item	Description
1.	Transition Plan at End of Contract Contractor agrees that at the end of this 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 on-line 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 by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	Environmentally Preferable 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).
2.	Post-Consumer Recycled Content (PCRC) Certification California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	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.
3.	Green Product Marking and Labeling Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	Wheel Weights California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	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. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	Consumer Products Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about . Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	Brake Friction Material All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Final_regulation_language_10032016.p df).

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	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, Struts and Steering	
17	Wipers/Washers	
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., cleaning supplies, wrenches, etc.)	

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

PLEASE NOTE: The Lead State's [Non-IT General Provisions \(6/8/2010\)](#) will be attached to the final Master Agreement and applicable for all State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

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) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

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

II. Term of Master Agreement

- 2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.
- 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.** The following order of precedence shall apply for Orders executed by Purchasing Entities:
 - 3.1.1 A Participating Entity's Participating Addendum ("PA");
 - 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3 A Purchase Order issued against the Master Agreement;
 - 3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

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 ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.
- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 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 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

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 one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

5.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use and the amount of sales. No personal identification numbers (e.g., names, addresses, **social security numbers or any other numerical identifier**) may be submitted with any report.

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

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 provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either 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.

5.6 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.

- 5.7 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 discounts contained in this Master Agreement represent the minimum discount 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. 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, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be

solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

- 7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

- ## VIII. Shipping and Delivery

- This document is not required to be submitted with final proposal.

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase 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, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
 - 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially 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 ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
 - 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

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

X. Warranty

- 10.1 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 10.2 **Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 **Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.4 **Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.
- 10.5 **Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

XI. Product Title

- 11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

- 12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.
- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
- 12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 12.2.1.2** specified by the Contractor to work with the Product;
 - 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

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

XIII. Insurance

13.1 Term. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

13.2 Class. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

13.3 Coverage. Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 13.3.2** Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.
- 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 Purchase 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), 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 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 inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

14.2.4 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 identify 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 ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 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 either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 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 Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.10 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 Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.11.2** 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.

Request for Proposal (RFP) 7219941

ATTACHMENT 13 - PARTICIPATING STATE TERMS

Participating States' terms are provided as a courtesy only. Please refer to RFP Section 1.6. Do not submit this attachment with the proposal.

STATE OF COLORADO

COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Effective 11/1/2018

Revised 9/23/2019

STATE OF HAWAII

NASPO ValuePoint

PARTICIPATING ADDENDUM**INSERT PORTFOLIO TITLE HERE**Led by the State of **insert State**Master Agreement #: **enter number** (hereinafter “Master Agreement”)Contractor: **enter NAME (Contractor)** (hereinafter “Master Agreement”)Participating State: **STATE OF HAWAII** (hereinafter “Participating State”)**State of Hawaii, State Procurement Office (SPO) Price List Contact 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 **[xxxxxxx]** 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:	Matthew Chow
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	(808) 586-0577
Fax:	(808) 586-0540
Email:	matthew.m.chow@hawaii.gov

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.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

Changes:

- A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero-dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 3 (or as amended) in accordance with the following schedule (or as requested):

	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 report shall identify each transaction and include the following information:

Department/Agency Name	Unit of Measure
Date of Purchase	Item No. Part Number (if applicable)
Product/Service Description	MSRP List Price
Quantity	NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at

<https://spo.hawaii.gov/wp-content/uploads/2017/12/AG-008-103D-1.pdf>.

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.

- C. 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.
- D. 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.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. 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, 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.
- G. 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.
 - 1. Chapter 237, General Excise Tax Law;
 - 2. Chapter 383, Hawaii Employment Security Law;
 - 3. Chapter 386, Workers' Compensation;
 - 4. Chapter 392, Temporary Disability Insurance;
 - 5. 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 on 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 it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. 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). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

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

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. 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/>.

H. 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.

I. 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 any and all required licenses through the duration of the contract and Participating Addendum.

J. 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 his 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.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability occurrence (occurrence form)	\$1,000,000 per \$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, unauthorized 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:

- A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- B. "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 and 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 by the State, Contractor shall be responsible for furnishing 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 of 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 list.

5. Lease Agreements: Leasing is not authorized by this Addendum. **Adjust as applicable.**
6. Subcontractors: All contactors, dealers, and resellers authorized in the State of **[insert Lead State]**, 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 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 authorized subcontractors, if any.

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.

10. 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.

11. 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:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

APPROVED AS TO FORM:

Deputy Attorney General

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.]***

STATE OF MONTANA

The following changes are modifying or supplementing the Master Agreement terms and conditions. The Master Agreement and the Participating Addendum together are referred to herein as the “Contract.”

State of Montana Terms and Conditions

ACCESS AND RETENTION OF RECORDS: Contractor agrees to provide the Participating Entity, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the Participating Entity or third party.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: Contractor shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the Participating Entity. (Section 18-4-141, MCA.)

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

DEFENSE, INDEMNIFICATION /HOLD HARMLESS: Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees,

representatives, assigns, subcontractors, except the sole negligence of Participating Entity or the contracting agency.

REDUCTION OF FUNDING: Participating Entity must by law terminate this Contract if funds are not appropriated or otherwise made available to support the Participating Entity's or contracting agency's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, Participating Entity shall terminate this Contract as required by law. Participating Entity shall provide Contractor the date Participating Entity's termination shall take effect. Participating Entity shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, Participating Entity shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date Participating Entity's termination takes effect. This is Contractor's sole remedy. Participating Entity shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

CHOICE OF LAW AND VENUE: Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in **Defense, Indemnification/Hold Harmless**.

TAX EXEMPTION: Participating Entity is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

STATE OF MONTANA ADMINISTRATIVE FEE: The Participating Entity assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this Participating Addendum.

REQUIRED REPORTING: Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the Participating Entity to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31

Third Quarter: January 1 through March 31
Fourth Quarter: April 1 through June 30

DELIVERY: Weekends and holidays excepted, deliveries shall be **F.O.B.**

DESTINATION, to the location shown below. The term "F.O.B. destination" as used in this clause, means free of expense to the Participating Entity or contracting agency and delivered to the location specified. The Contractor shall:

- Pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner as to ensure delivery in good condition and as required by this IFB;
- Prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate;
- Deliver the shipment in good order and condition to the point of delivery specified in the IFB;
- Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the Participating Entity or contracting agency at the delivery point specified in the IFB;
- Furnish a delivery schedule and designate the mode of delivering carrier; and
- Pay and bear all charges to the specified points of delivery.

NOTE: NO EXCEPTIONS TO THE LISTED FEDERAL TERMS AND CONDITIONS WILL BE CONSIDERED. THE STATE IS NOT PERMITTED TO ALTER THESE TERMS AND CONDITIONS THROUGH OUR FEDERAL PARTNER.

Federal Terms and Conditions
(Non-Construction)

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the contractor/vendor agrees to acceptance of the following Federal Terms and Conditions along with all other provisions that are specific to this solicitation or contract as applicable.

1. Nondiscrimination

Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. Lobbying

Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. Drug-Free Work Place

Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. Environmental Protection

(a) Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

(b) In accordance with the EPA rules, the parties further agree that the Contractor/Vendor shall also identify to the state any impact this contract may have on:

- (1) The quality of the human environment and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
- (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- (4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
- (5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

5. Use of United States Flag Vessels

Contractor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

The Contractor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. Debarment and Suspension.

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred,

suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the Contractors contract files, and shall be subject to audit by Federal and State audit agencies

7. Buy American Act.

Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. Uniform Relocation Assistance and real Property Acquisition Policies

Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. Copeland "Anti-Kickback" Act

Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. Contract Work Hours and Safety Standards Act

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

11. Rights to Inventions Made Under a Contract or Agreement.

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor/Vendor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Any Contract or subcontract in excess of \$150,000 must comply with 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). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. System For Award Management and Data Universal Numbering Requirements

Contractor agrees to comply with the System for Award Management and Data Universal Numbering as indicated below:

Contractor must provide DUNS number to the state. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun & Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the internet (currently at <http://fedgov.dnb.com/webform>)

15. Procurement of recovered materials.

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR 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 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and

establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. 2 C.F.R. 200.326, Appendix II, Required Contract Clauses

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this agreement as applicable. Contractor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this agreement with the state.

STATE OF NEW MEXICO

1. Taxes:

The Contractor shall be reimbursed by the Procuring Agency 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 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 Procuring Agency 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.

D. Retainage.
Reserved

E. Performance Bond.
Reserved

2. Term:

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on **DATE**. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150.

3. Termination:

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material

breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency 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 Procuring Agency 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 perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the 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 Procuring Agency'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 PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

4. 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 Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency 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.

5. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency 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.

6. 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 Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency'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 State; (ii) the Contractor is not a member of the family of a public officer or employee of the 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 State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the 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 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 State whose official act, while in State employment, directly resulted in the Procuring Agency'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 Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency 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 Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

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

7.

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 Procuring Agency 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.

8. 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.

9. 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.

10. 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.

11. Workers Compensation:

The Contractor agrees to comply with state 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 Procuring Agency.

12. 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.

13. 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 Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

14. 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.

15. 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.

16. 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 State Purchasing Agent or agency or entity.

17. 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 Procuring Agency:

Mark Hayden, State Purchasing Agent

State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

18. Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

19. 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.

20. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency 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 Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

21. Equitable Remedies:

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

22. 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 State exceed \$250,000 dollars.

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 state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://bewellnm.com>.

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency 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 Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, 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 State 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 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 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.

25. 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 Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. 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 Procuring Agency.

27. Inspection of Plant:

The State Purchasing Agent or agency or entity that is a party to this Agreement 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.

28. Commercial Warranty:

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

29. Condition of Proposed Items:

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

30. Release:

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency 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 Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project 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 Procuring Agency approval. The Procuring Agency, 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 Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

33. Incorporation by Reference and Precedence:

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

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) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property 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.

35. 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

State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

- C. The State Purchasing Agent or other party to this Agreement 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 State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the State Purchasing Agent or other party to this Agreement 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 State Purchasing Agent or other party to this Agreement 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 State Purchasing Agent or other party to this Agreement 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 State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement 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 PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

36. Insurance:

If the services contemplated under this Agreement will be performed on or in 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:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.

d. 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.

37. Arbitration:

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

38. New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. “**Gross total sales**” means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows:

<u>Quarter:</u>	<u>Period End:</u>	<u>Report Due:</u>
First	September 30	October 31
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the “*State Purchasing Division.*” This contract number **10-00000-20-00063** must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

STATE OF UTAH

ATTACHMENT A: STANDARD TERMS AND CONDITIONS FOR GOODS STATE OF UTAH COOPERATIVE CONTRACTS

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for goods meaning all things (including specially manufactured goods) which are tangible and usually movable. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users.

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, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
- b) **"Contract"** means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
- c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor sign.
- d) **"Contractor"** means the individual or entity delivering the Goods 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 State of Utah Division of Purchasing.
- 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 (commodities), including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract. To the extent this Contract entails delivery or performance of services (including maintenance, installation, or product support), such services will be deemed

“Goods” within the meaning of the Utah Uniform Commercial Code when reasonable to do so.

- j) **“Proposal”** means Contractor’s response to the Division’s Solicitation.
- k) **“Solicitation”** means the documents used by the Division to obtain Contractor’s Proposal.
- l) **“State of Utah”** means the State of Utah, in its entirety, including its departments, institutions, agencies, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- m) **“Subcontractors”** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor’s manufacturers, distributors, and suppliers.
- n) **“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. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS

VERIFICATION SYSTEM": This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

1. 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.
2. 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.
3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. CONFLICT OF INTEREST: Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.

7. INDEPENDENT CONTRACTOR: Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.

8. 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 the Division, Eligible Users, or the State of Utah. 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.

9. EMPLOYMENT PRACTICES: Contractor agrees to abide by the following employment laws: (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.

- 10. 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.
- 11. 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 State Entity 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.
- 12. 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 Goods ordered prior to date of termination. In no event shall the Division or Eligible Users be liable to the Contractor for compensation for any Good neither requested nor accepted by the Eligible Users. 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 Division or the Eligible Users for any damages or claims arising under this Contract.
- 13. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division, if the Division 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 the Divisions or the Eligible User's ability to pay Contractor. 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, the Eligible User will reimburse Contractor for the Goods properly ordered until the effective date of said notice. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. SALES TAX EXEMPTION: The Goods under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the 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.

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

Remedies available to Eligible Users under this section include, but are not limited to, the following: Contractor will repair or replace Goods (at no charge to the Eligible User) within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Contract. If the repaired and/or replaced Goods 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 the Eligible User may otherwise have under this Contract.

16. 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 Services 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.

17. 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.

18. 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 Goods based upon the same terms, conditions, and prices of this Contract.

19. INDIVIDUAL CUSTOMERS: Each Eligible User that purchases Goods from this Contract will be treated as if they were 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.

20. 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.

21. 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 State Entity 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 State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity 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.

22. DELIVERY: Time is of the essence for all deliveries made under this Contract. All deliveries under this Contract will be F.O.B. destination 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 the Eligible User, except as to latent defects, fraud, or Contractor's warranty obligations. Contractor's failure to provide the Goods by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping the Goods.

23. REPORTS AND FEES:

1. **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.
2. **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>.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
4. **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.
5. **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.

24. 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.

25. ACCEPTANCE AND REJECTION: The Eligible User shall have thirty (30) days after delivery of the Goods to perform an inspection of the Goods to determine whether the Goods conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Goods by the Eligible User.

If Contractor delivers nonconforming Goods, the Eligible User may, at its option and at Contractor's expense: (i) return the Goods for a full refund; (ii) require Contractor to

promptly correct or replace the nonconforming Goods; or (iii) obtain replacement Goods from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Goods without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Goods. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

- 26. INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Goods 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.
- 27. 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 by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. 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 Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Goods shall not be deemed an acceptance of the Goods and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
- 28. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, 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.
- 29. OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Goods, 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.
- 30. 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 services 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 services, 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 Services (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 Services 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.

- 31.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.

- 32. REMEDIES:** Any of the following events will constitute cause for the Division 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. The Division 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, the Division 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 the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Goods that do not conform to this Contract.
- 33. FORCE MAJEURE:** Neither party to this Contract 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. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.
- 34. CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, 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) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the Division and the relevant Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- 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 Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah 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.
- 35. 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 done in writing.
- 36. 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.
- 37. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, 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 supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

- 38. WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
- 39. 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.
- 40. 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.
- 41. DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, 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.
- 42. 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); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
- 43. 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. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. 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.
- 44. SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Goods.

45. 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.

46. 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.

(Revision Date: 23 April 2020)

STATE OF VERMONT

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS REVISED DECEMBER 15, 2017

- 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.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. 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 with regard to 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: 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.

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.

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.

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: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or nonrenewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

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: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act 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. Location of State Data: No 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 continental United States, except with the express written permission of the State.

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 the 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. 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. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. 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.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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, he/she:

- A. is not under any obligation to pay child support; or

- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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).

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 ("Location of State Data"); 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. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

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: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement 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 lock-outs)

("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 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 at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that 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 Grant immediately, and the State shall have no obligation to pay Subrecipient 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 granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 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 (COSO).

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 \$1,001, 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 D: OTHER PROVISIONS**

1. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

1.1 General Representations and Warranties. *The Contractor represents, warrants and covenants that:*

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.*
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.*
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.*
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.*
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.*
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.*

1.2 Contractor's Performance Warranties. *Contractor represents and warrants to the State that:*

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.*
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful*

code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

- 2. REMEDIES FOR DEFAULT.** In the event either party is in default under this Contract, the non- defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

3. SOV Cybersecurity Standard 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

4. Information Security Requirements, Generally

In cases where the State is not permitted to manage/modify the automation equipment (server/computer/other) that controls testing or monitoring devices, the Contractor agrees to update and provide patches for the automation equipment and any installed operating systems or applications on a quarterly basis (at minimum). The Contractor will submit a report to the State of updates installed within 30 days of the installation as well as a Plan of Actions and Milestones (POA&M) to remediate any vulnerabilities ranging from Critical to Low. The contractor will provide an upgrade path or compensatory security controls for any operating systems and applications listed as beyond "end-of-life" or EOL, within 90 days of the EOL and complete the EOL system's upgrade within 90 days of the approved plan.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000.00 per claim, \$1,000,000.00 aggregate; and (b) first party Breach Notification Coverage of not less than \$1,000,000.00.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.*

STATE OF CONNECTICUT

Participating Addendum to NASPO ValuePoint Master Agreement
7219941

NASPO ValuePoint
PARTICIPATING ADDENDUM



Automotive Parts
Lead by the State of California (“Lead State”)

Master Agreement #: 7219941

Contractor:

Participating Entity: **State of Connecticut**

Master Agreement Terms and Conditions:

1. Scope:

This Participating Addendum allows for the purchase of Automotive Parts, led by the State of California along with a multi-state sourcing team for use by State agencies and political subdivisions and institutions in accordance with Conn. Gen. Stat. §4a-54 located in the participating State/Entity authorized by that State’s statutes to utilize its State contracts, and which receives prior written approval of the State’s Chief Procurement Official.

The Participating State will identify this Participating Addendum as the State of Connecticut Department of Administrative Services (DAS), Procurement Division Contract 20PSX0127.

- 2. Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, political subdivisions and other entities authorized to use statewide contracts in the State of Connecticut. The Participating Entity hereby represents that all such entities authorized to use statewide contracts shall be bound by all of the Terms and Conditions of the Master Agreement and this Addendum as if each such entity were an original signatory hereto. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Order of Precedence:

- a) A Participating Entity’s Participating Addendum;

- b) NASPO ValuePoint Master Agreement Terms & Conditions, including all Exhibits;
- c) An Order issued against the Master Agreement.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to the Master Agreement are only those that are expressly accepted by the Lead State in writing, and attached to the Master Agreement. No other terms and conditions apply.

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

Contractor

Name:	Yolanda Tutt
Address:	707 Third Street, Second Floor, West Sacramento, CA 95605
Telephone:	916-375-4408
Fax:	(855-757-9600 fax
Email:	Yolanda.tutt@dgs.ca.gov

Participating Entity

Name:	Marisol Rivera
Address:	450 Columbus Blvd., Hartford, CT 06103
Telephone:	860-713-5435
Email:	Marisol.rivera@ct.gov

5. Orders:

Any order placed by a Participating Entity through the 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.

All purchase orders shall contain the Master Agreement No. **7219941** and the DAS Contract No. 20PSX0127.

6. Participating State Modifications or Additions to Master Agreement

The parties agree that the following provisions of this Participating Addendum shall apply to any action, purchase or purchase order issued by the State of Connecticut or any of its Participating Entities.

6.1. Definitions.

The following definitions apply to this Participating Addendum:

- (a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
- (b) Confidential Information: Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the State classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, State, or local government records which are lawfully made available to the general public.
- (c) Confidential Information Breach: Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Participating Entity or State.
- (d) Contract: Master Agreement #7219941 and this Participating Addendum.
- (e) Contractor.
- (f) Contractor Parties: Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to perform under this Contract in any capacity.
- (g) DAS: The State of Connecticut, Department of Administrative Services.

- (h) Records: All working papers and such other information and materials furnished to or prepared by the Contractor in performing this Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.
- (i) State: The State of Connecticut, including DAS, Participating Entities and any office, department, board, council, commission, institution or other agency of the State of Connecticut authorized to issue Purchase Orders under this Participating Addendum.

6.2. Whistleblowing.

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

6.3. Forum and Choice of Law.

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any

Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

6.4. Sovereign Immunity.

The parties acknowledge and agree that nothing in the solicitation or this Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this Section conflicts with any other section, this Section shall govern.

6.5. Summary of State Ethics Laws.

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract.

6.6. Campaign Contribution Restriction.

For all State contracts, defined in Conn. Gen. Stat. §9-612 as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising State contractors of State campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations".

6.7. Executive Orders.

This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it. This Contract may also be subject to the applicable parts of Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04, and Executive Order No.

49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office in accordance with their respective terms and conditions. If Executive Orders 14, 61 or 49 are applicable, it is deemed to be incorporated into and are made a part of this Contract as if it had been fully set forth in it. At the Contractor's request, the State shall provide a copy of these orders to the Contractor.

6.8. NonDiscrimination.

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of this Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- (6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- (7) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
- (8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

- (9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- (10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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

(b)

- (1) The Contractor agrees and warrants that in the performance of this Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed, and that employees are treated when employed, without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;
- (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to State that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;

- (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;
 - (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and
 - (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

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

6.9. Indemnification.

- (a) Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, to the extent arising from act(s), error(s) or omission(s) of the Contractor or Contractor Parties relating to the performance of this Contract (collectively, the "Acts"); and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.
- (b) The Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability to the extent arising from the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- (d) Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- (e) Contractor shall carry and maintain at all times during the term of this Contract, and during the time that any provisions survive the term of this Contract, sufficient general liability insurance to satisfy its obligations under this Contract. Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to DAS prior to the effective date of this Contract. Contractor shall not begin performance until the delivery of the policy to DAS. Contractor shall provide an annual electronic update to DAS on or before each anniversary of the effective date during the term of this Contract. The State shall be entitled to recover under the insurance policy if a body of competent jurisdiction determines that Participating Entity or the State was contributorily negligent.

- (f) This Section shall survive the termination of this Contract and shall not be limited by reason of any insurance coverage.

6.10. Tangible Personal Property.

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

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

6.11. Audit and Inspection of Plants, Places of Business and Records.

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

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

6.12. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices as they may be amended from time to time.
- (b) Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in the written policies of the Participating Entity or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
 - (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 - (3) A process for reviewing policies and security measures at least annually;
 - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) Contractor and Contractor Parties shall notify the Participating Entity and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control

has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which in the sole opinion of the State or the Participating Entity after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, §36a-701b, or otherwise (Breach), Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Participating Entity and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes §36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractors' nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from the State, DAS or any Participating Entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.

(d) Contractor shall incorporate the requirements of this Section in all subcontracts entered into in connection with this Participating Addendum requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

(e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant the provisions of this Contract concerning the obligations of the Contractor to the State or the Participating Entity.

6.13. P-Card (Purchasing MasterCard Credit Card)

Purchases may be made using the State of Connecticut Purchasing Card (MasterCard) in accordance with Memorandum No. 2011-11 issued by the Office of the State Comptroller.

Contractor shall be equipped to receive orders issued by a Participating Entity using the MasterCard. Contractor shall be responsible for the credit card user-handling fee associated with MasterCard purchases. The Contractor shall charge to the MasterCard only upon acceptance of goods delivered to the Participating Entity or the rendering of services in accordance with this Contract.

Questions regarding the State of Connecticut MasterCard Program may be directed to Ms. Kerry DiMatteo, Procurement Card Program Administrator at 860-713-5072.

6.14 Termination

- a. Notwithstanding any provisions in this Contract, the State or a Participating Entity, through a duly authorized employee, may terminate the Purchase Order created pursuant to this Contract whenever the State or the Participating Entity makes a written determination that such termination is in the best interests of the State. The State or the Participating Entity shall notify the Contractor in writing of the termination pursuant to this Section, which notice shall specify the effective date of termination and the extent to which the Contractor must complete its performance under this Contract prior to such date.

6.15. Lead State Terms that shall not apply to the State of Connecticut.

The parties hereby agree that any provision in the Standard Terms and Conditions of the NASPO ValuePoint, the State of California's negotiated terms and conditions or the Master Agreement between NASPO ValuePoint and the Contractor set forth on the Master Agreement and any of its Exhibits, shall not apply to the State or any of the Participating Entities from the State if the provision violates sovereign immunity or conflicts with this Participating Addendum. Further the parties agree that in any instance where a provision requires the State to indemnify the Contractor or that the parties are bound by binding arbitration that constitutes a violation of sovereign immunity, and therefore is not applicable.

1. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to Contractor and the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The above terms and the following changes are modifying or supplementing the Master Agreement terms and conditions.

2. *Reserved*

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

Participating Entity: State of Connecticut Dept. of Administrative Services Procurement Division	Contractor:
Signature:	Signature:
Name:	Name:

Marisol Rivera	
Title: Contract Specialist	Title:
Date:	Date:

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Contract Coordinator:	Tara Larwick
Email:	tlarwick@naspovaluepoint.org

***[Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.]***

STATE OF MAINE

RIDER B

STATE OF MAINE - TERMS AND CONDITIONS

1. INVOICES AND PAYMENT: Department will pay the Provider as follows: Payment terms are net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documents. Provider shall submit detailed invoices, itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Department and Advantage Contract numbers for this contract.
2. BENEFITS AND DEDUCTIONS. If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.
3. INDEPENDENT CAPACITY. In the performance of this Contract, the parties hereto agree that the Provider, and any agents and employees of the Provider, shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.
4. DEPARTMENT'S REPRESENTATIVE. The Contract Administrator shall be the Department's representative during the period of this Contract. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Contract are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.
5. CHANGES IN THE WORK. The Department may order changes in the work, the Contract Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.
6. SUB-AGREEMENTS. Unless provided for in this Contract, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Contract Administrator. Any sub-agreement hereunder Entered into subsequent to the execution of this Contract

must be annotated "approved" by the Contract Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

7. SUBLETTING, ASSIGNMENT OR TRANSFER. The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of Contract shall in any case release the Provider of its liability under this Contract.
8. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, the Provider agrees as follows:
 - a. The Provider shall not discriminate against any employee or applicant for employment relating to this Contract because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.
 - b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Contract, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
 - c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining Contract, or other Contract or understanding, whereby it is furnished with labor for the performance of this Contract a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

- e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.
 - f. Providers and subcontractors with Contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs, which programs must conform with applicable state and federal laws, rules and regulations.
 - g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Contract so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
9. EMPLOYMENT AND PERSONNEL. The Provider shall not engage on a full-time, part-time or other basis during the period of this Contract, any (a) state employee or (b) any former state employee who participated in any way in the solicitation, award or administration of this Agreement. This restriction shall not apply to regularly retired employees or any employee who has been out of state employment for a period of twelve (12) months.
10. WARRANTY. The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Contract and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
11. ACCESS TO RECORDS. As a condition of accepting an Contract for services under this section, a Provider must agree to treat all records, other than proprietary information, relating to personal services work performed under the Contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the Department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the Provider and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the Contract and information concerning employee and Contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Contract and make such materials available at its offices at all reasonable times during the period of this Contract and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents

by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

12. TERMINATION. (a) The performance of work under the Contract may be terminated by the Department whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the date on which such termination becomes effective. Upon such termination, the Department shall pay the Provider for work performed by the Provider prior to the date of Notice of Termination. (b) Either party may terminate this Agreement for cause by providing a written notice of termination stating the reason for the termination. Upon receipt of the notice of termination, the defaulting party shall have fifteen (15) business days to cure the default. If the default is of such a nature that it cannot be cured within fifteen (15) business days, the defaulting party shall have such additional time, as the parties may agree to, to cure the default, provided the defaulting party has taken steps to cure the default with the initial 15 days.
13. GOVERNMENTAL REQUIREMENTS. The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.
14. GOVERNING LAW. This Contract shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Contract shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
15. STATE HELD HARMLESS. The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all third party claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.
16. NOTICE OF CLAIMS. The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed that is related in any way to the Contract or which may affect the performance of duties under the Contract, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Contract or which may affect the performance of duties under the Contract.

17. APPROVAL. This Contract must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.
18. INSURANCE. The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Contract with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991, may continue under that arrangement. Prior to or upon execution of this Contract, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.
19. NON-APPROPRIATION. Notwithstanding any other provision of this Contract, if the State does not receive sufficient funds to fund this Contract and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Contract.
20. SEVERABILITY. The invalidity or unenforceability of any particular provision, or part thereof, of this Contract shall not affect the remainder of said provision or any other provisions, and this Contract shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
21. ORDER OF PRECEDENCE. In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:
- Rider C Exceptions
 - Rider B Terms and Conditions
 - Rider A Scope of Work
 - Funding Rider
 - Rider D Included at Department's Discretion
 - Rider E Included at Department's Discretion
 - Rider F Included at Department's Discretion
 - Rider G Identification of Country in which contracted work will be performed
 - Business Associate Agreement included at Department's Discretion
 - Other Included at Department's Discretion
22. FORCE MAJEURE. The performance of an obligation by either party shall be excused in the event that performance of that obligation is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party.

23. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Contract up to any amounts due and owing to the State with regard to this Contract, any other Contract, any other Contract with any State department or agency, including any Contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.
24. ENTIRE CONTRACT. This document contains the entire Contract of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Contract that any implied waiver occurred between the parties, which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Contract, or to exercise an option or election under the Contract, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Contract shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Contract or at law.
25. AMENDMENT: No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Provider.
26. DEBARMENT, PERFORMANCE, AND NON-COLLUSION CERTIFICATION: By signing this Contract, the Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:
- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.
 - b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
 - i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.
 - ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - iv. Have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.
- c. Have not Entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

COMMONWEALTH OF VIRGINIA

COMMONWEALTH OF VIRGINIA REQUIRED GENERAL TERMS AND CONDITIONS GOODS AND NONPROFESSIONAL SERVICES

- A. VENDORS MANUAL
- B. APPLICABLE LAWS AND COURTS
- C. ANTI-DISCRIMINATION
- D. ETHICS IN PUBLIC CONTRACTING
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986
- F. DEBARMENT STATUS
- G. ANTITRUST
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS
- I. CLARIFICATION OF TERMS
- J. PAYMENT
- K. PRECEDENCE OF TERMS
- L. QUALIFICATIONS OF BIDDERS OR OFFERORS
- M. TESTING AND INSPECTION
- N. ASSIGNMENT OF CONTRACT
- O. CHANGES TO THE CONTRACT
- P. DEFAULT
- Q. TAXES
- R. USE OF BRAND NAMES
- S. TRANSPORTATION AND PACKAGING
- T. INSURANCE
- U. ANNOUNCEMENT OF AWARD
- V. DRUG-FREE WORKPLACE
- W. NONDISCRIMINATION OF CONTRACTORS
- X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION
- Y. AVAILABILITY OF FUNDS
- Z. SET-ASIDES IN ACCORDANCE WITH
THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY
- AA. BID PRICE CURRENCY
- BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH
- CC. CIVILITY IN STATE WORKPLACES

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The process for filing a complaint about this solicitation is in section 7.13 of the *Vendors Manual*. (Note section 7.13 does not apply to protests of awards or formal contractual claims.) The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "I Sell To Virginia".

- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all

supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.

- e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.
 - f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000:
By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

- I. **CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset

proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351.,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

- 3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
 1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the

contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

- a. By mutual agreement between the parties in writing; or
- b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
- c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise

and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

If sales or deliveries against the contract are not exempt, the contractor shall be responsible for the payment of such taxes unless the tax law specifically imposes the tax upon the buying entity and prohibits the contractor from offering a tax-included price.

- R. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.
- S. **TRANSPORTATION AND PACKAGING:** By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of

employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractors	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	<i>Code of Virginia</i> § 8.01-581.15 https://law.lis.virginia.gov/vacode/title8.01/chapter21.1/section8.01-581.15/
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

- U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO (www.eva.virginia.gov) for a minimum of 10 days.
- V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation,

possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- W. **NONDISCRIMINATION OF CONTRACTORS:** An offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

- b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- Z. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY:** This solicitation is set-aside for award priority to DSBSD-certified micro businesses or small businesses when designated as “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro businesses or small businesses also includes DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, offerors shall be deemed micro businesses or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of proposals.
- AA. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.
- BB. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the

contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- CC. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.