

REQUEST FOR PROPOSALS FOR
CYBERSECURITY AND INFORMATION SECURITY SERVICES

Issued by the State of Idaho
Solicitation Number RFP#928



Amendment 2

ATTACHMENT 10

REQUESTED MODIFICATIONS FORM

Instructions: Complete this form and submit to the RFP Lead *prior to the deadline for submitting questions* if you are proposing modifications or taking exception to any of the requirements, terms, or conditions included in the RFP. See RFP Administrative Overview document, Section II. G. Requested Modifications for a full explanation of the process surrounding vendor-requested modifications. Be sure to complete all fields in the table. Offerors must specifically address any and all proposed modifications and exceptions. **Blanket requests to negotiate requirements, terms, or conditions will not be considered.**

Before requesting modifications to the Sample Master Agreement, please review the RFP Administrative Overview document, Section II. G. Requested Modifications.

RFP Section	RFP Requirement, Term, or Condition	Proposed Modification, Alternative, or Exception	Reason for Proposed Modification, Alternative, or Exception
Sample Master Agreement Section 3.1	3.1 Order. Any Order placed under this Master Agreement will consist of the following documents: 3.1.1 A Participating Entity's Participating Addendum ("PA"); 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto; 3.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement; 3.1.4 The Solicitation or, if separately executed after award,	3.1 Order. Any The following Order of Precedence will apply to any Order made placed under this Master Agreement will consist of the following documents: 3.1.1 A Participating Entity's Participating Addendum ("PA"); 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto; 3.1.3 A Purchase Order, Service Level Agreement , or Scope of Work/Specifications issued against the Master Agreement;	Lumen requests minor modifications to the order of precedence to <u>NASPO response: Lumen's comment was cut off, so I am not sure of their reasoning, but the proposed 3.1.6 does not make sense, as all attachments to the MA are already accounted for in 3.1.2. I am potentially okay with the addition of the SLA to 3.1.3 but would want to see what it covers and would want to confirm that it can be reviewed and negotiated by the Purchasing Entity at the Order level.</u>

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	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.	3.1.4 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. 3.1.6 Any other Attachments to the Master Agreement not listed above	
Sample Master Agreement, Section 5.4.5	Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.	Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.	This language is not in our current NASPO contract, and the intent of the language is unclear. NASPO Legal – the intent of the Most Favored Customer requirement is to ensure that the pricing and terms offered under the NASPO ValuePoint Master Agreement remain competitive when compared to other public sector agreements nationwide, not just within the NASPO purchasing platform. NASPO legal – willing to negotiate
Sample Master Agreement, Section 7.1	Order Numbers. Master Agreement order and Purchase Order numbers must be clearly shown on all acknowledgments,	Order Numbers. Master Agreement order and Purchase Order numbers must be clearly shown on all acknowledgments,	This requirement requires manual support. Limiting this only to requesting entities allows Lumen to offer more competitive pricing.

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	packing slips, invoices, and on all correspondence.	packing slips, invoices, and on all correspondence <u>if the purchasing entity requires it. In all cases, a Purchasing Entity must be able to match each delivery to the appropriate Order.</u>	<u>NASPO can be flexible on this requirement, but at minimum, the Purchasing Entity must be able to match each delivery to the appropriate Order.</u>
Sample Master Agreement, Section 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.	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 <u>unless the lack of conformity is due to Purchasing Entity's failure to comply with contract requirements.</u> 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.	Lumen would not hold liability when the cause of lack of conformity is due to the Purchasing Entity's action or lack of action. <u>NASPO Legal: mostly fine with this but want to be clear what "failure" is.</u>
Sample Master Agreement, Section X	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.	X. Warranty <u>Warranty: At a minimum the Contractor must warrant the following:</u> <u>a. Contractor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorization for</u>	Lumen requests modification to the required warranty to align with language in Lumen's separate NASPO agreement and to align with the products and services it will provide under the new NASPO MSA.

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	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	the Contractor to provide the Services described in this Master Agreement. b. Contractor will perform materially as described in this Master Agreement, SLA, Statement of Work, including any performance representations contained in the Contractor's response to the Solicitation by the Lead State. c. Contractor represents and warrants that the representations contained in its response to the Solicitation are true and accurate in all material respects. d. The Contractor will not interfere with a Purchasing Entity's access to and use of the Services it acquires from this Master Agreement. e. The Contractor warrants that the Products it provides under this Master Agreement are free of malware as of the date of delivery of such Products. The Contractor must use industry-leading technology to detect and remove worms, Trojans, rootkits, rogues, dialers, spyware, etc. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS."	Acceptance of this language will provide clarity to purchasing entities on the warranties available for the products and services Lumen provides under the NASPO MSA. If necessary, additional warranty language may be negotiated at the individual purchase level as applicable to the specific products or services provided. <u>NASPO Legal: Reserve for negotiation. I want to see what others proposed and maintain consistency across the portfolio if possible.</u>
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	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.	CONTRACTOR DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.	
Sample Master Agreement Section XI	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	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. Lumen will endeavor to support the purchasing entity's requirements of Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product contingent on the end user licensing agreement. If Purchasing	Lumen requests language related to IP that is applicable to the products and services it proposes under this RFP. <u>NASPO Legal: Reserve for negotiation. I want to see what others proposed and maintain consistency across the portfolio if possible. The edits to 11.3 seem to explicitly exclude any license to Contractor's IP under this MA, which directly contradicts the original language.</u>

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	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.	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 Nothing in the Agreement or the performance of it will convey, license, or otherwise transfer any right, title, or interest in any intellectual property or other proprietary rights held by either party or its licensors. 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-	
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		party rights in the Pre-existing Intellectual Property.	
Sample Master Agreement Section 12.1	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.	12.1 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 the negligence or willful misconduct any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement except for the Lead State's or Participating Entities' own negligence.	Lumen requests a minor and reasonable modification to the scope of indemnification. Lumen notes that this language is similar to what it has agreed upon with NASPO previously. Acceptance of this language would provide clarity on indemnification as well as align with industry standards. <u>NASPO Legal: Reserve for negotiation. I want to see what others proposed and maintain consistency across the portfolio if possible.</u>
Sample Master Agreement New Sections 12.2.5 and 12.2.6		12.2.5 THIS SECTION 12.2. STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS SUPPLIERS, AND THE EXCLUSIVE REMEDY OF THE INDEMNIFIED PARTIES, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY	Section 12.2.5 Lumen requests a new addition to the language related to intellectual property indemnification to provide clarity on the scope of this requirement. Lumen notes that this language aligns with language it has agreed upon with NASPO previously.

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		RIGHTS OR PROPRIETARY RIGHTS. THIS INDEMNITY OBLIGATION AND REMEDY ARE GIVEN TO THE INDEMNIFIED PARTIES SOLELY FOR THEIR BENEFIT AND IN LIEU OF, AND CONTRACTOR DISCLAIMS ALL WARRANTIES, CONDITIONS, AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO ANY PRODUCT. 12.2.6 Limitation of Liability. Except for liability arising from a party's obligations of indemnification in this Section 12 above and the Lead State or any Participating Entity's obligation to pay all fees under this Agreement, the limit of liability shall be as follows: i. Contractor's liability for any claim, loss or liability arising out of, or connected with the Services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount equal to (i) two (2) times the charges specified in the Purchase Order for the Services, or parts thereof forming the basis of the Purchasing Entity's claim or (ii) one million dollars	Acceptance of this section will provide clarity on the scope of Lumen's intellectual property indemnification of the lead state or purchasing entities. This will help avoid any misunderstandings related to the scope of Lumen's indemnification in the event of infringement. Lumen requests language to clarify a small exception to the restriction on assignment in a small set of circumstances. Section 12.2.6 Acceptance of this language would allow for a more efficient process in circumstances where Lumen may assign to a parent, subsidiary, or successor in interest while also ensuring that the Lead State receives timely notification of any such assignment. <u>NASPO Legal: Reserve for negotiation. I want to see what others proposed and maintain consistency across the portfolio if possible.</u>
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		(\$1,000,000.00), whichever is greater; provided that direct damages arising out of bodily injury or death shall not be limited by this paragraph. This limitation of liability is cumulative per Purchasing Entity and not per incident. ii. Notwithstanding the above, neither the Contractor nor the Purchasing Entity shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Purchasing Entity, the Contractor, or by others.	
Sample Master Agreement Section 14.3.1	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.	14.3.1 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, except that Contractor may assign its rights and obligations under this Master Agreement and any Participating Addendum, in whole or in part, to any parent, subsidiary, or successor in interest, provided it gives the Lead State and the applicable Purchasing Entity notice of such assignment. In either case written notice shall be provided 30	Lumen requests language to clarify a small exception to the restriction on assignment in a small set of circumstances. Acceptance of this language would allow for a more efficient process in circumstances where Lumen may assign to a parent, subsidiary, or successor in interest while also ensuring that the Lead State receives timely notification of any such assignment. <u>NASPO Legal: Reserve for negotiation. I want to see what others</u>

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		days prior to the proposed assignment action.	<u>proposed and maintain consistency across the portfolio if possible. At minimum, notice must be provided to the Lead State, Participating Entities, and Purchasing Entities.</u>
Sample Master Agreement Section 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.	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) thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.	Lumen requests a modification from 15 to 30 days to cure a default and notes that this will provide Lumen with time to work with the Lead State and any purchasing entities to rectify any issues. Lumen also notes that this language aligns with language previously agreed upon between Lumen and NASPO. Acceptance of this modification will allow for additional time for Lumen to cure a default while maintaining a specific timeline for cure. This will allow Lumen to work through any issues with the Lead State or purchasing entity towards resolution. <u>NASPO Legal: Reserve for negotiation. I am fine with 30 days (please note that Section 14.8.4 applies this timeframe to Participating Entities and Purchasing Entities as well), but I would prefer that all MAs be consistent on this point, so I would want to see what deviations, if any, other suppliers have requested before making a final decision.</u>

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Sample Master Agreement New Section 14.15		14.15 Participating Agreement Terms. 14.15.1 Participating Entities may agree to terms in the Participating Agreement or individual order that are different than the terms of the Master Agreement. Contractor and Participating Entities will negotiate terms in Participating Agreements in good faith, and such terms may include additional terms or customer waiver of Master Agreement requirements, including but not limited to data security and on-shore requirements.	Lumen requests this language to address the concept that Participating Entities may negotiate terms at the PA level and to provide clarity that Participating Entities can ensure that they have terms that meet the needs for what they would like to purchase. Acceptance of this language would provide further clarity to PA negotiations and allow Lumen to provide customers with products and services that meet their individual needs. <u>NASPO Legal: I believe it is already sufficiently clear that a Participating Entity can modify terms as they apply to the Participating Entity.</u>
Lumen Service Exhibits			Lumen requests inclusion of its Service Exhibits applicable to the services it will propose under this Agreement. Lumen can provide the proposed Service Exhibits as a part of its response to this solicitation. <u>NASPO Legal: We can include these in the MA as informational if the Lead State is amenable.</u>
Scope of Work, Section 1.C	Breach Response Specialist: A specialized role, performed by an attorney, in responding to a Data Breach or other cyber incident.	Breach Response Specialist: A specialized role, performed by an attorney, in responding to a Data Breach or other cyber incident.	Industry standard defines a breach response specialist as synonymous with an incident response analyst or security incident responder. These

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			are cybersecurity professionals, not legal, and it is standard for them to work with various teams in the organization, including legal, IT, and public relations to minimize damage, contain threats, and restore systems after a breach. Response: This will be determined by the Purchasing Entity

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Before requesting modifications to the Sample Master Agreement, please review the RFP Administrative Overview document, Section II. G. Requested Modifications.

RFP Section	RFP Requirement, Term, or Condition	Proposed Modification, Alternative, or Exception	Reason for Proposed Modification, Alternative, or Exception
Scope of Work Section 1. C	Breach Response Specialist: A specialized role, performed by an attorney, in responding to a Data Breach or other cyber incident.	Breach Response Specialist: A specialized role, performed by an attorney, in responding to a Data Breach or other cyber incident.	Industry standard defines a breach response specialist as synonymous with an incident response analyst or security incident responder. These are cyber security professionals, not legal, and it is standard for them to work with various teams in the organization, including legal, IT, and public relations to minimize damage, contain threats, and restore systems after a breach. <u>Response; This will be determined by the Purchasing Entity</u>