



Attachment 05 PARTICIPATION INFORMATION

The NASPO ValuePoint Process

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

THE LEAD STATE MODEL™

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

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

Historical Usage

The following table identifies total sales reported by Electronic Monitoring Products and Services contractors through NASPO ValuePoint Master Agreements over the past five (5) calendar years:

Year	Reported Historical Sales Volume
2018	\$22.83 million
2019	\$24.98 million
2020	\$25.70 million
2021	\$30.24 million
2022	\$23.41 million

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

Interested States

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

**Request for Proposals for
ELECTRONIC MONITORING PRODUCTS AND SERVICES**

Issued by the **State of Connecticut**
Solicitation Number 22PSX0021



Interested States	Reported Estimated Annual Volume	Sample Participating Addendum Terms and Conditions
Delaware	\$265,656	n/a
Hawaii	\$128,490	Yes
Illinois	\$231,910	Yes
Maine	Not available	n/a
Nevada	\$158,110	n/a
New Mexico	\$111,410	Yes
South Dakota	\$3,000,000	no
Washington	\$429,573	n/a

TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: \$4,196,787

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

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



Interested State Information Form

Please complete this form if your state wishes to be identified as a potential Participating Entity ("Interested State") in the Request for Proposals for the NASPO ValuePoint portfolio named below (the "RFP"). A confidential draft of the RFP has been shared with NASPO primary members for review. Comments and questions on the RFP draft, as well as a completed copy of this form, may be emailed to the NASPO ValuePoint contact identified below by the indicated due date.

Submission of this form does not commit any Interested State to execution of any Participating Addendum.

I. SOLICITATION INFORMATION.

- A. **Portfolio Name:** Electronic Monitoring
- B. **Lead State:** Connecticut
- C. **NASPO ValuePoint Contact:** Tia Snyder
- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** Delaware
- B. **State Point of Contact Name:** Rhonda Figueroa
- C. **State Point of Contact Title:** State Contract Procurement Officer I
- D. **State Point of Contact Email:** Rhonda.Figueroa@delaware.gov
- E. **NASPO Primary Member or Designee Name:** Peter Korolyk
- F. **NASPO Primary Member or Designee Email:** Peter.Korolyk@delaware.gov

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:** \$265,656
- B. **Estimated Annual Volume for Non-state-level Entities:** \$0.00
- C. **Total Estimated Annual Volume (sum of A and B):** \$265,656

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

- ☒ My state is not providing terms and conditions for inclusion in the RFP.

- ☐ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.



Interested State Information Form

Please complete this form if your state wishes to be identified as a potential Participating Entity ("Interested State") in the Request for Proposals for the NASPO ValuePoint portfolio named below (the "RFP"). A confidential draft of the RFP has been shared with NASPO primary members for review. Comments and questions on the RFP draft, as well as a completed copy of this form, may be emailed to the NASPO ValuePoint contact identified below by the indicated due date.

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- B. **Estimated Annual Volume for Non-state-level Entities:** \$0.00
- C. **Total Estimated Annual Volume (sum of A and B):** \$265,656

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Please check one of the below.

- ☒ My state is not providing terms and conditions for inclusion in the RFP.

- ☐ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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

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

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

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

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

1. Scope: This addendum covers the **[contract title]** led by the State of **[xxxxxx]** for use by state agencies and other entities located in the Participating State of Hawaii authorized by that State's statutes to utilize State contracts.
2. Participation: All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

Participating State

Name:	Name of purchasing specialist
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	phone number
Fax:	(808) 586-0540
Email:	specialist e-mail address

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

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

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

Changes:

- A. 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:

- Jurisdiction
- Department/Agency Name
- Date of Purchase
- Product/Service Description

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

- Quantity
- Unit of Measure
- Item No./Part Number (if applicable)
- MSRP List Price
- 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. The attached Exhibit A, Attorney General's General Conditions, are made part of this Addendum. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- 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 are not mandatory. This addendum is non-exclusive and any conflict among documents shall follow the Order of Precedence described in the Master Agreement.
- 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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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/>.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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

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

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

Coverage

Limits

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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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:

- 1) "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- 2) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

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

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

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

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

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

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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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 its 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>.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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: BONNIE KAHAKUI	Name:
Title: Acting Administrator, SPO	Title:
Date:	Date:

APPROVED AS TO FORM:

Deputy Attorney General

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Name
Telephone:	Phone
Email:	email

***[Please email fully executed PDF copy of this
document to***

PA@naspovaluepoint.org

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

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

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

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

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

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

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

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

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

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

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

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

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

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

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

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

13. Termination for Default.

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

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

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

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

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

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

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

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

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

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

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

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

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

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

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

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

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

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

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

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

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

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

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

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

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

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

e. Records Retention.

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



Interested State Information Form

Please complete this form if your state wishes to be identified as a potential Participating Entity ("Interested State") in the Request for Proposals for the NASPO ValuePoint portfolio named below (the "RFP"). A confidential draft of the RFP has been shared with NASPO primary members for review. Comments and questions on the RFP draft, as well as a completed copy of this form, may be emailed to the NASPO ValuePoint contact identified below by the indicated due date.

Submission of this form does not commit any Interested State to execution of any Participating Addendum.

I. SOLICITATION INFORMATION.

- A. **Portfolio Name:** Electronic Monitoring
- B. **Lead State:** Connecticut
- C. **NASPO ValuePoint Contact:** Tia Snyder
- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** State of Illinois
- B. **State Point of Contact Name:** Cassandra Wilkin
- C. **State Point of Contact Title:** State Purchasing Officer, Chief Procurement Office
- D. **State Point of Contact Email:** Cassandra.Wilkin@illinois.gov
- E. **NASPO Primary Member or Designee Name:** Ellen H. Daley
- F. **NASPO Primary Member or Designee Email:** Ellen.H.Daley@illinois.gov

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:** Not Available
- B. **Estimated Annual Volume for Non-state-level Entities:** Not Available
- C. **Total Estimated Annual Volume (sum of A and B):** Not Available

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

- ☐ My state is not providing terms and conditions for inclusion in the RFP.
- ☒ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.

Cooperative Participation State of Illinois Specific Terms and Conditions

1. This participating agreement executed by the State of Illinois may be designated as available to all or certain governmental units and/or qualifying not for profit agencies. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30 ILCS 525/.
2. In no event will the total term of any participating agreement, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This participating agreement and all related public records maintained by, provided to, or required to be provided to the State, are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any participating agreement executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any participating agreement, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any participating agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any participating agreement. The State of Illinois does not waive sovereign immunity.
6. Illinois may further evaluate the lead entity's awarded contracts to make best value determinations.
7. Registration in the Illinois Procurement Gateway is required before a participating agreement with the State of Illinois may be executed. For information on registration, please visit www.ipg.vendorreg.com.
8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy Vendor Registration Manual.
9. Any vendor with a participating agreement may be required to meet an Illinois Business Enterprise Program goal (30 ILCS 575/).
10. Any vendor with a participating agreement may be required to meet a contracting goal with Illinois small businesses (30 ILCS 500/45-90).



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I. SOLICITATION INFORMATION.

- A. **Portfolio Name:** Electronic Monitoring
- B. **Lead State:** Connecticut
- C. **NASPO ValuePoint Contact:** Tia Snyder
- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** Maine
- B. **State Point of Contact Name:** Brandon Martin
- C. **State Point of Contact Title:** Procurement Planning Manager
- D. **State Point of Contact Email:** brandon.martin@maine.gov
- E. **NASPO Primary Member or Designee Name:** David Morris
- F. **NASPO Primary Member or Designee Email:** David.morris@maine.gov

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:**
- B. **Estimated Annual Volume for Non-state-level Entities:**
- C. **Total Estimated Annual Volume (sum of A and B):** Unknown

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

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II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** Nevada
- B. **State Point of Contact Name:** Heather Moon
- C. **State Point of Contact Title:** Purchasing Officer II
- D. **State Point of Contact Email:** hmoon@admin.nv.gov
- E. **NASPO Primary Member or Designee Name:**
- F. **NASPO Primary Member or Designee Email:**

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:** \$25,000.00
- B. **Estimated Annual Volume for Non-state-level Entities:** Unknown
- C. **Total Estimated Annual Volume (sum of A and B):** \$25,000.00

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

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- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** New Mexico
- B. **State Point of Contact Name:** Theresa Mendibles
- C. **State Point of Contact Title:** IT Procurement Specialist
- D. **State Point of Contact Email:** theresa.mendibles@gsd.nm.gov
- E. **NASPO Primary Member or Designee Name:** Valerie Paulk
- F. **NASPO Primary Member or Designee Email:** valerie.paulk@gsd.nm.gov

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

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- A. **Estimated Annual Volume for State-level Entities:**
- B. **Estimated Annual Volume for Non-state-level Entities:**
- C. **Total Estimated Annual Volume (sum of A and B):**

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

- ☐ My state is not providing terms and conditions for inclusion in the RFP.

- ☒ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.

Attachment 1

State of New Mexico Specific T&Cs

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.

2. **Retainage.**

Reserved

3. **Performance Bond.**

Reserved

4. **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, 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.

5. **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.**

6. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the 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.

7. 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.

8. Conflict of Interest; Governmental Conduct Act:

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any 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.

9. Amendment:

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

B. If the 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.

10. Merger:

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

11. Penalties for violation of law:

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

12. Equal Opportunity Compliance:

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

13. Workers Compensation:

The Contractor agrees to comply with 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.

14. Applicable Law:

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

15. Records and Financial Audit:

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the 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.

16. Invalid Term or Condition:

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

17. Enforcement of Agreement:

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

18. Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. Notices:

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

To the Procuring Agency:

Valerie Paulk, Acting State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

20. Succession:

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

21. Headings:

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

22. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the 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.

23. Equitable Remedies:

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irreparable 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.

24. New Mexico Employees Health Coverage:

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

The Contractor agrees to provide a utilization report to SPD for all sales and/or services, other revenues including commissions, and fees charged under this Participating Addendum, subtotaled by procuring agency name, in accordance with the following schedule:

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

Sample Reports can be found at:

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

Email completed reports to: GSD.QuarterlyUsageR@gsd.nm.gov

The Vendor shall indicate the contract number **SWPA #30-00000-23-00041** on the remittance.

Send payment of fees through U.S. Mail or Courier Delivery to:

New Mexico State Purchasing Division
Joseph Montoya Building Room 2016,
1100 St. Francis Drive, Santa Fe, New Mexico 87505
or P.O. Box 6850, Santa Fe, New Mexico 87502

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 469-2679 or (505) 795-4512



Interested State Information Form

Please complete this form if your state wishes to be identified as a potential Participating Entity ("Interested State") in the Request for Proposals for the NASPO ValuePoint portfolio named below (the "RFP"). A confidential draft of the RFP has been shared with NASPO primary members for review. Comments and questions on the RFP draft, as well as a completed copy of this form, may be emailed to the NASPO ValuePoint contact identified below by the indicated due date.

Submission of this form does not commit any Interested State to execution of any Participating Addendum.

I. SOLICITATION INFORMATION.

- A. **Portfolio Name:** Electronic Monitoring
- B. **Lead State:** Connecticut
- C. **NASPO ValuePoint Contact:** Tia Snyder
- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** South Dakota
- B. **State Point of Contact Name:** Lisa Hubbard
- C. **State Point of Contact Title:** Assistant Director
- D. **State Point of Contact Email:** lisa.hubbard@state.sd.us
- E. **NASPO Primary Member or Designee Name:** Steven L. Berg
- F. **NASPO Primary Member or Designee Email:** steven.berg@state.sd.us

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:** \$2,000,000.00
- B. **Estimated Annual Volume for Non-state-level Entities:** \$1,000,000.00
- C. **Total Estimated Annual Volume (sum of A and B):** \$3,000,000.00

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

- ☒ My state is not providing terms and conditions for inclusion in the RFP.

- ☐ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.



Interested State Information Form

Please complete this form if your state wishes to be identified as a potential Participating Entity ("Interested State") in the Request for Proposals for the NASPO ValuePoint portfolio named below (the "RFP"). A confidential draft of the RFP has been shared with NASPO primary members for review. Comments and questions on the RFP draft, as well as a completed copy of this form, may be emailed to the NASPO ValuePoint contact identified below by the indicated due date.

Submission of this form does not commit any Interested State to execution of any Participating Addendum.

I. SOLICITATION INFORMATION.

- A. **Portfolio Name:** Electronic Monitoring
- B. **Lead State:** Connecticut
- C. **NASPO ValuePoint Contact:** Tia Snyder
- D. **NASPO ValuePoint Contact Email:** tsnyder@naspovaluepoint.org
- E. **Form Due Date:** January 27, 2023 (ITP's received after this date will be included in the solicitation via addendum)

II. STATE INFORMATION. Please provide the information below. Forms should be completed and submitted only with the approval of the state's NASPO primary member or designee.

- A. **State:** Washington
- B. **State Point of Contact Name:** Stacia Wasmundt
- C. **State Point of Contact Title:** Contracts Specialist
- D. **State Point of Contact Email:** stacia.wasmundt@des.wa.gov
- E. **NASPO Primary Member or Designee Name:** Elena McGrew
- F. **NASPO Primary Member or Designee Email:** elena.mcgregw@des.wa.gov

III. ESTIMATED ANNUAL VOLUME. Please provide your state's estimated annual volume of spend on products and services within the scope of the RFP, based on historical usage and/or anticipated future usage. The Total Estimated Annual Volume for each Interested State will be included in the RFP for informational purposes only.

Providing an estimate does not commit any Interested State to any minimum or maximum volume of sales.

- A. **Estimated Annual Volume for State-level Entities:** Average \$18,438/year
- B. **Estimated Annual Volume for Non-state-level Entities:** Average \$411,135/year
- C. **Total Estimated Annual Volume (sum of A and B):** \$429,573

IV. PARTICIPATING ADDENDUM TERMS AND CONDITIONS. Interested States may attach state-specific terms and conditions to this form for inclusion in the RFP as potential Participating Addendum terms and conditions. Terms and conditions provided by Interested States will be shared with vendors for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

Please check one of the below.

- ☐ My state is not providing terms and conditions for inclusion in the RFP.

- ☒ My state has attached state-specific terms and conditions to this form, or included state-specific terms and conditions below, for inclusion in the RFP.



**PARTICIPATING ADDENDUM
NASPO VALUEPOINT**

INSERT APPLICABLE GOODS/SERVICES

Administered by the State of _____ (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: _____

Insert Name of Contractor

(hereinafter "Contractor")

and

State of Washington

(hereinafter "Participating State")

WASHINGTON CONTRACT No.: _____

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and _____, a _____ ("Contractor") and is dated and effective as of _____, 20__.

RECITALS

- A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.
- B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.
- C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.
- D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.
- E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for [REDACTED] led by the State of [REDACTED] for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):
 - (a) **WASHINGTON STATE AGENCIES.** All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - (b) **WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES).** Any the following specific institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
 - Evergreen State College;
 - Community colleges; and
 - Technical colleges.
 - (c) **CONTRACT USAGE AGREEMENT PARTIES.** The Master Agreement also may be utilized by any of the following types of entities that have executed a Contract Usage Agreement (CUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

- 3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at [WEBS](#).

Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING:** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
 - (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
 - (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax) authorized by this Participating Addendum.
- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$
 - (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
 - (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported

by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Contract No.: [REDACTED]
 - The NASPO Master Agreement No.: [REDACTED]
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit timely usage reports, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participating Addendum or exercise any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. **CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- (b) **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION).** Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participation Agreement, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- (d) **OCIO POLICY & SECURITY COMPLIANCE.** Contractor represents and warrants that it shall comply with the Washington Office of the Chief Information Officer (OCIO) statewide information technology policies 141.10 – Securing Information Technology Assets Standards and 188 - Accessibility, as applicable, for Purchasing Entity and for Contractor's Product(s) procured by Purchasing Entity. Such policies are located on the OCIO website at <https://ocio.wa.gov/policies>. Prior to final execution of a Washington State Agency's Order with a Contractor, the Contractor's Product(s), as implemented by the Washington State Agency, may be subject to a security design review performed by Washington Consolidated Technology Services to ensure compliance with OCIO Policy 141.10 - Securing Information Technology Assets Standards.
- (e) **GREEN/SUSTAINABLE.** Contractor represents and warrants that Contractor shall endeavor to supply and delivery goods in alignment with the State of Washington's green/sustainability strategy which, at a minimum is designed to minimize the use of unnecessary product packaging, reduce the use of toxic chemicals, and offer Purchasers, where practicable, 'green products' that provide equivalent performance.

3.6. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

3.7. **CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES:**

- (a) **CONTRACTOR'S SALES AUTHORITY.** Pursuant to this Participating Addendum, Contractor is authorized to provide only those goods/services set forth in the Master Agreement as conditioned by this Participating Addendum. Contractor shall not represent to any Purchaser hereunder that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) **INVOICES.** Contractor must provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order. Each invoice must include the:
 - Washington Contract Number [REDACTED];
 - Lead State Master Agreement Number [REDACTED];
 - Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management (OFM); and
 - Applicable Purchaser's order number.

Invoices must be prominently annotated by the Contractor with all applicable volume discount(s).

4. **LEASE AGREEMENTS:** Any Purchaser that desires to lease equipment pursuant to the Master Agreement, must have the authority to do so. This Participating Addendum does not provide independent

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

INSERT NAME OF CONTRACTOR,
A

By: _____

Type Name

Its: _____

Date: _____

By: _____

Type Name

Its: _____

Date: _____