REQUEST FOR PROPOSALS
for
GROUND MAINTENANCE EQUIPMENT

Issued by

THE COMMONWEALTH OF VIRGINIA

DEPARTMENT OF GENERAL SERVICES

In collaboration with

NASPO ValuePoint

SOLICITATION NUMBER RFP 61514

RFP WEBSITE: [LINK]

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RFP OVERVIEW

I. INTRODUCTION

This Request for Proposals (RFP) is being issued by the Commonwealth of Virginia ("Lead State"), Department of General Services, in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements with manufacturers of new grounds maintenance equipment. Collectively, these Master Agreements will constitute the NASPO ValuePoint Grounds Maintenance Portfolio.

The purpose of this competitive solicitation is to develop a "catalog category discount" contract to provide for equipment to be made available for purchase. Only Manufacturer Suppliers with dealer networks in many states are asked to bid directly on the contract. The contract will be a multiple award contract for both equipment and warranty work with replacement parts.

About NASPO ValuePoint

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

Participation in NASPO ValuePoint Master Agreements is convenient and cost-effective for eligible entities—including state departments, institutions, agencies, and political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—and suppliers, with no membership or registration required. In 2024, contractors reported a combined $**20.47 billion** in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP, including a combined **$40.22 million** in sales through the current Ground Maintenance Equipment portfolio.
More information about NASPO, NASPO ValuePoint, and the NASPO ValuePoint Lead State Model can be found at www.naspo.org and www.naspovaluepoint.org and in Attachment E, Participation Information.

II. GENERAL INFORMATION AND INSTRUCTIONS

A. RFP Contact. The following individual is the sole contact for this RFP:

Tracy Wrenn
Statewide Sourcing & Contracting Officer
State of Virginia
tracy.wrenn@dgs.virginia.gov

B. RFP Website. The following website is the sole official source for RFP information and updates:

Virginia Business Opportunities (cgieva.com)

C. Contract Term. The initial term of the master agreement shall be from date of award for two (2) years with the option to renew for three (3) additional one-year periods.

D. Renewals. Prior to any renewal, the lead state shall subjectively consider the value of the contract, the Supplier's performance and review of current pricing and discounts offered by Supplier. If it is determined changes to the Master Agreement are required as a condition

precedent to renewal, the lead State and Supplier will cooperate to evidence such required changes in a modification/addendum.

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

1. Attachment A RFP Terms and Conditions
2. Attachment B Scope of Work
3. Attachment C RFP Evaluation Plan
4. Attachment D Sample Master Agreement
5. Attachment E Participation Information
6. Attachment F Protest Information
7. Attachment G Offeror Information, Acknowledgements, and Certifications
8. Attachment H Offeror Response Worksheet
9. Attachment I Cost Proposal
10. Attachment J Proposed Modifications to Sample Master Agreement
11. Attachment K Claim of Business Confidentiality
12. Attachment L Virginia General Terms and Conditions
13. Attachment M Virginia Special Terms and Conditions
14. Attachment N Small Business Subcontracting Plan
15. Attachment O Virginia State Corporation Commission Form
16. Attachment P Vendor Data Sheet
17. Attachment Q Authorized Dealer Worksheet

F. Important Dates.

1. **RFP Posting Date:** May 1, 2024
2. **RFP Pre-proposal Conference:** May 8, 2024 at 1:00 PM Eastern Time *See link below*.
3. **RFP Q&A Deadline:** May 10, 2024 at 5:00 PM Eastern Time
4. **RFP Close Date:** June 12, 2024 at 5:00 PM Eastern Time

Attendance at the Virtual RFP Pre-proposal Conference is optional, and registration is not required. The information to join the Virtual Pre-Proposal Conference is located below.

Dates and deadlines are subject to change. Offerors should continue checking the RFP Website for the most up-to-date information and Addendums.

Offeror's that may be planning to include a Redlined copy of Attachment D, Sample Master Agreement, if proposing modifications are encouraged to submit a copy of this during the Pre-Proposal conference to potentially give legal ample time to review if needed.

Microsoft Teams Need help?

Join the meeting now

Meeting ID: 263 212 889 207
Passcode: JTjWcZ

Dial-in by phone

+1 434-230-0065,,438899053# United States, Lynchburg
Phone conference ID: 438 899 053#

A. How to Ask Questions.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. For questions about the content of this RFP, please submit them in writing via email to **Tracy Wrenn** at tracy.wrenn@dgs.virginia.gov by the deadline (date and time shown) in Section II. Questions submitted after this deadline will not be answered. Answers will be publicly given via the Commonwealth of Virginia's Solicitation site as an amendment to the RFP as soon as practicable. Questions must reference the specific section of the RFP to which the question relates.
3. For assistance with technical issues associated with the RFP Website, contact [e-procurement vendor supplier support and/or state e-procurement administrator contact information].

B. How to Respond.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. Prepare a proposal that:
   a. Follows the requested format;
   b. Includes the Solicitation Number on all materials making up the proposal;
   c. Addresses each question and request for a response in this RFP, including all questions in Attachment H, Offeror Response Worksheet;
   d. Clearly demonstrates your ability to meet the Scope of Work described in Section III and Attachment B; and
   e. Includes all required submissions identified in Section IV.
3. Submit your proposal by the RFP Close Date electronically through the RFP Website.

II. SCOPE OF WORK

A detailed description of the Deliverables being sought through this RFP is attached as Attachment B Scope of Work.

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

III. OFFEROR RESPONSE

A. Required Submissions. The following must be submitted with your proposal:

1. Any response required to be submitted directly through the RFP Website;
2. Completed and signed Attachment G, Offeror Information, Acknowledgements, and Certifications
3. Completed Attachment H, Offeror Response Worksheet
4. Completed Attachment I, Cost Proposal, submitted as a separate document and separate file, when submitting electronically

5. Completed Attachment J, Proposed Modifications to Sample Master Agreement
6. Redlined copy of Attachment D, Sample Master Agreement, if proposing modifications
7. Completed and signed Attachment K, Claim of Business Confidentiality
8. Completed and signed Attachment N, Small Business Subcontracting Plan
9. Completed and signed Attachment O, Virginia State Corporation Commission Form
10. Completed Attachment P, Vendor Data Sheet
11. Completed Attachment Q, Authorized Dealer Worksheet
12. Redacted copy of proposal clearly marked as such, if claiming confidential, proprietary, or protected information

B. **Other Documents.** The following are informational only and do **not** need to be submitted with your proposal:

1. This RFP Overview
2. Attachment A, RFP Terms and Conditions
3. Attachment B, Scope of Work
4. Attachment C, RFP Evaluation Plan
5. Attachment D, Sample Master Agreement, if not proposing modifications
6. Attachment E, Participation Information
7. Attachment F, Protest Information
8. Attachment L, Virginia General Terms and Conditions
9. Attachment M, Virginia Special Terms and Conditions

IV. EVALUATION AND AWARD PROCESS

A. Proposals will be sealed until the RFP Close Date. After opening, proposals will be evaluated in stages as set forth in this section and further detailed in Attachment C, RFP Evaluation Plan.

1. **Stage 1: Initial Responsiveness Evaluation.** Proposals omitting required documents or responses may be rejected in accordance with Attachment A, RFP Terms and Conditions.

2. **Stage 2: Mandatory Minimum Requirements Evaluation.** Complete and responsive proposals will be reviewed for compliance with mandatory minimum requirements. Proposals failing to meet or exceed all Mandatory Minimum Requirements identified in Attachment C, RFP Evaluation Plan may be rejected in accordance with Attachment A, RFP Terms and Conditions.

3. **Stage 3: Technical Criteria Evaluation.** Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the Technical Criteria set forth in Attachment C, RFP Evaluation Plan. Experience and Qualifications, ability to meet the scope of work, warranty and service, product selection and availability. Methods used to make this determination may include, but are not limited to, one or more of the following:
    - Identification of a natural break in total scores
    - Identification of a minimum scoring threshold above which Proposers are deemed to be adequately qualified.
    - Consideration of the optimal number of Contractors required to successfully supply Deliverables to Participating Entities and Purchasing Entities.

4. **Stage 4: Cost Evaluation.** Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated based off a market value evaluation and a discount off percentage, see Attachment C, RFP Evaluation Plan for further details. Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.

5. All weighted scores will be totaled to arrive at the supplier's total scored evaluation. See attachment C, RFP Evaluation Plan for further details.

6. In accordance with Commonwealth of Virginia, § 2.2-4302, Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the criteria involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

7. It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, at the Lead State's discretion. The evaluation process is designed to award the contract resulting from this RFP to the Supplier deemed to be the most responsive and responsible concerning requirements outlined in the Technical Requirements

B. After evaluations are completed, the Lead State and Multistate Sourcing Team will determine which proposals are most advantageous to the Lead State and potential Participating Entities and Purchasing Entities. Awards will be made at the natural break of high and low scores.

C. Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to NASPO ValuePoint for approval of the proposed awards.

D. Following approval of NASPO ValuePoint, the Commonwealth of Virginia through the Department of General Services, Division of Purchases and Supply, will publicly post such notice online at http://www.eva.virginia.gov for a minimum of ten (10) calendar days. Contracts will be awarded to eVA registered vendors only.

Attachment A
RFP TERMS AND CONDITIONS

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

I. DEFINITIONS

A. **Award** or **award** means the identification of Offerors eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation

B. **Authorized Users** means All Commonwealth state agencies, institutions of higher education, and other public bodies and entities authorized to use the Master Agreement, pursuant to §§ 2.2-4301 and 2.2-4304 of the Code of Virginia, including private institutions of higher education chartered in Virginia as defined in Code of Virginia §2.2-1120 and granted tax-exempt status under Internal Revenue Code §501(c)(3); and NASPO ValuePoint Participating State governments (i.e., departments, agencies, institutions, etc.) institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the U.S., and other eligible entities subject to approval of the individual state procurement official and compliance with local statutory and regulatory provisions.

C. **Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.

D. **Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.

E. **Day** means a calendar day, unless otherwise indicated.

F. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.

G. **Department of Small Business and Supplier Diversity (DSBSD)** means Commonwealth of Virginia agency dedicated to enhancing the participation of small, women and minority-owned businesses in Virginia's procurement process.

H. **eVA** means Commonwealth of Virginia's Internet electronic procurement solution website portal http://www.eva.virginia.gov that streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with Commonwealth of Virginia state agencies and public bodies. Reference Attachment B Item X entitled "eVA BusinessTo-Government Vendor Registration, Contracts, and Orders" for important information on eVA. Obtain more information on eVA at www.eva.virginia.gov and click on "I Sell to Virginia".

I. **Hot List Program (or Equivalent) Pricing** means Contractor's list of discounted, liquidated close-out or discontinued equipment or products. This list may include promotional prices.

J. **Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.

K. **Lead State** means the State issuing this RFP.

L. **Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.

M. **Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this

RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.

N. **NASPO** means the National Association of State Procurement Officials.
O. **NASPO ValuePoint** means the cooperative contracting division of NASPO.
P. **OEM** means Original Equipment Manufacturer
Q. **Offeror** means an entity or individual submitting a proposal in response to this RFP.
R. **Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
S. **Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
T. **Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
U. **Proposal** or **proposal** means the document(s), data, information, and other media submitted by an Offeror in response to this RFP, including information submitted directly through the RFP Website and information submitted after the RFP Close Date at the request of the Lead State.
V. **Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
W. **RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead State to the RFP Website, as amended.
X. **RFP Close Date** means the date and time identified in Section [II.F.4] of the RFP Overview.
Y. **RFP Contact** means the individual identified in Section [II.A] of the RFP Overview.
Z. **RFP Open Date** means the date and time identified in Section [II.F.1] of the RFP Overview.
AA. **RFP Q&A Deadline** means the date and time identified in Section [II.F.3] of the RFP Overview.
BB. **RFP Website** means the website identified in Section [II.B] of the RFP Overview.
CC. **Small Business** means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business. (Code of Virginia, § 2.2-4310)
DD. **Solicitation Number** means the number identified on the cover page of the RFP Overview and in the header of each attachment to this RFP.
EE. **Sourcing Team** a group comprised of subject matter experts and procurement experts from Participating Entities that are most likely to use any resulting Master Agreement(s).

II. GOVERNING LAW AND VENUE

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

E. All Deliverables proposed by Offeror must comply with all applicable federal, state, and local laws, rules, and policies.

III. RFP DOCUMENTS

A. RFP Website.

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

B. RFP Amendments.

1. The Lead State may, at any time and in its sole discretion, issue one or more amendments to this RFP. Information shared orally or in informal communications will not be considered an amendment unless explicitly stated in the communication or documented in writing on the RFP Website.
2. Offerors may, through the process described in this RFP for asking questions, propose amendments to the RFP, including adjustment of deadlines. The Lead State is not obligated to consider any proposed amendment.
3. The Lead State may extend any deadline given to Offerors during the RFP process, including the RFP Close Date and RFP Q&A Deadline.
4. The Lead State may make immaterial corrections or clarifications to the RFP.
5. Offeror is wholly responsible for reviewing amendments and updates to the RFP Website, acknowledging amendments as required, and submitting a proposal that is responsive to and compliant with the RFP as amended.

C. Waiver.

1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.
2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.
3. The Lead State may waive minor irregularities or defects in an Offeror's proposal.

D. Conflicts and Issues.

1. The following should be brought to the attention of the Lead State using the process described in this RFP for asking questions or, if applicable, by filing a protest using the process described in Attachment F, Protest Information:
    a. Any alleged conflict among the materials composing this RFP; and
    b. Any alleged issue relating to the content of this RFP, including instructions, requirements, or specifications alleged to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful.
2. Any protest, claim, dispute, or action based upon a conflict or issue described in Subsection 1.a or Subsection 1.b will be filed no later than the RFP Close Date. Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described in Subsection 1.a or Subsection 1.b if not filed by the RFP Close Date.

IV. PROPOSALS

A. Late Delivery or Non-delivery of Proposal. Offeror is wholly responsible for ensuring Offeror's proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date.

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

C. Discussions, Clarifications, and Demonstrations. The Lead State may, but is not obligated to, enter into discussions with or request clarifications or demonstrations from one or more Offerors prior to awarding a Master Agreement. Offerors are expected to be ready to participate in discussions, clarifications, or demonstrations with limited notice. Discussions, clarifications, and demonstrations must be consistent with Offeror's original proposal and will become an addendum to Offeror's proposal.

D. Cost Proposal.

1. Offeror must complete all required elements of Attachment I, Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
3. Inclusion of cost or pricing information in any document other than the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
4. Offeror's proposed costs must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, and personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee. Proposed costs incorporated into a Master Agreement resulting from this RFP represent not-to-exceed pricing and minimum discounts, where applicable. Except as permitted by Subsection 5, pricing offered to Participating Entities and Purchasing Entities must be no higher than pricing set forth in the Master Agreement.
5. A Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.
6. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness by the Lead State. Costs determined not to be reasonable or best-value by the Lead State, including any cost to which Offeror's proposed markup or discount is to be applied, may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.
7. At the Lead State's discretion, points earned in the Cost Proposal evaluation may be normalized and scaled to award the Offeror earning the highest total cost score the maximum number of cost points possible.

E. Proposed Modifications to the Sample Master Agreement.

1. The Lead State may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement. Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.
2. Offeror-specific modifications to Attachment D, Sample Master Agreement, may be proposed as part of Offeror's proposal in Attachment J, Proposed Modifications to Sample Master Agreement, but are strongly discouraged. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.
3. The Lead State will not consider any proposed modification that:
    a. Is not submitted with Offeror's proposal in Attachment J, Proposed Modifications to Sample Master Agreement;
    b. Is not accompanied by an explanation as required in Attachment J, Proposed Modifications to Sample Master Agreement;
    c. Is not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal;
    d. Merely references another document or a URL; or
    e. Modifies the NASPO ValuePoint administrative fee.
4. Offerors may propose additional terms but must include them in Attachment J, Proposed Modifications to Sample Master Agreement and must clearly identify where any terms conflict with the Sample Master Agreement.
5. If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment D, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.

F. Proposal Contact.

1. The Proposal Contact identified by Offeror in Attachment G, Offeror Information, Acknowledgements, and Certifications must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact. Offeror is wholly responsible for ensuring communications received by Offeror's Proposal Contact are reviewed and addressed timely by the appropriate personnel.
2. The Lead State may, but is under no obligation to, notify Offeror's Proposal Contact of updates to the RFP Website, including the posting of RFP amendments. Offeror is wholly responsible for reviewing updates and submitting a proposal that is responsive to and compliant with the RFP as amended.

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

H. Firm Offer. Offeror's proposal will act as a firm offer for 180 days following the RFP Close Date. After 180 days, the offer will remain open unless revoked by Offeror via written withdrawal of Offeror's proposal in accordance with Virginia's Public Procurement Act.

I. Ownership and Disclosure of Proposals.

1. Hard copy proposals and tangible items submitted by Offeror in connection with this RFP, including physical media and product samples, will become the property of the Lead State and may not be returned to Offeror.
2. Offeror grants Lead State and NASPO a perpetual, irrevocable, non-exclusive, royalty-free, and transferable right to display, modify, copy, and otherwise use the contents of Offeror's proposal, which may be:
    a. Shared with NASPO members;
    b. Shared with entities represented on the Multistate Sourcing Team;
    c. Posted to the NASPO ValuePoint website following execution of Master Agreements for examination by potential Participating Entities and Purchasing Entities;
    d. Subject to disclosure in accordance with applicable public information laws, rules, and policies; and
    e. Subject to retention, archiving, and destruction in accordance with applicable retention laws, rules, and policies.
3. If Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment K, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

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

K. **Required Signatures.** Offeror's failure to have an authorized representative sign any document or attachment requiring a signature, including electronic signatures or certifications, may result in rejection of the proposal by the Lead State.

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

V. RIGHTS RESERVED TO THE LEAD STATE

A. **RFP Contact and Multistate Sourcing Team.**

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

Sourcing Team, provided the composition complies with the Lead State's laws, rules, and policies.

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

C. Rejection of Proposals. The Lead State may reject Offeror's proposal at any time if the Lead State determines that:

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

D. Cancellation.

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

E. No Exclusivity.

1. Master Agreements resulting from this RFP will be established solely for the convenience of Participating Entities. The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.
2. The Lead State may, at its discretion, issue a supplemental solicitation during the term of a Master Agreement resulting from this RFP if the Lead State determines that:
    a. There is insufficient competition among Contractors awarded a Master Agreement resulting from this RFP;
    b. The quantity or diversity of Deliverables available through Master Agreements resulting from this RFP is insufficient to meet demand; or
    c. Changes in the industry, market, or technology justify the solicitation of new or supplemental Contractors or Deliverables.

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

G. Conditional Awards.

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:
    a. Approval by NASPO ValuePoint;
    b. Approval by any individual or group of individuals required to approve Lead State awards or contracts, including but not limited to legal counsel, an overseeing board, or agency head;

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

d. Negotiation of Master Agreement terms, conditions, and pricing satisfactory to the Lead State, awarded Offeror, and NASPO ValuePoint.

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

3. Awards and Master Agreements not approved by NASPO ValuePoint may, at the Lead State's option, result in a contract for use by the Lead State only.

4. Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.

5. Nothing in this section affects Offeror's right to file a protest in accordance with Attachment F, Protest Information.

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

VI. POTENTIAL PARTICIPATING ENTITIES

A. Interested States.

1. States that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested States in Attachment E, Participation Information. This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.

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

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

B. Participating Entities.

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

a. Political subdivisions, public agencies, and service districts;

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

c. Federally recognized tribes;

d. Quasi-governmental entities; and

e. Eligible non-profit organizations.

2. Prior to execution of a Participating Addendum with an entity described above, a Contractor must coordinate with NASPO to confirm the entity's eligibility to execute a

Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

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

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

Attachment B
SCOPE OF WORK

This Scope of Work describes the Deliverables being sought through this RFP and the scope of what Contractors will be expected to offer through a Master Agreement resulting from this RFP. The Scope of Work is intended to provide potential Offerors with sufficient basic information to submit a proposal. It is not intended to limit a proposal's content or exclude any relevant or essential data.

I. OVERVIEW AND DEFINITIONS

The Commonwealth of Virginia, Department of General Services, is requesting proposals for Ground Maintenance Equipment in furtherance of the NASPO ValuePoint Cooperative Purchasing Program.

II. MASTER AGREEMENT OBJECTIVES

The objective of this RFP is to obtain best value, competitive proposal requirements, and to receive collective volume purchasing by all government entities through the NASPO ValuePoint Cooperative Purchasing Program, which creates more favorable pricing than is obtainable by an individual state or local government entities.

III. MASTER AGREEMENT DELIVERABLES

1. Product Categories

A. Ground Maintenance Equipment:

The award of this RFP will cover categories which contain Ground Maintenance equipment, such as Commercial Mowers, self-propelled mowers, zero turn mowers, walk behind mowers, robotic mowers, heavy duty tractors, compact tractors, PTO driven towed tractors, utility vehicles, golf and turf equipment, sprayers, tillers, handheld equipment, additional equipment, attachments, and accessories.

B. Value Added Option for Additional Equipment

Attachment I, Cost Proposal allows Offerors to offer their most frequently purchased items or special contract listings for this award as a value add. These items will hold cost for the first initial period of the contract. In addition, Offerors may offer as a value add to this award, other equipment and / or categories which fall under the general guidelines of these equipment types. Subject to Participating Entity approval, these value-add options may or may not be ultimately exercised at the participating addendum level. This may be an emerging technology in equipment or general enhancements such as, Remote Control, Automation, Safety Features, and Alternative Fuel Options. Special financing and or leasing options should also be listed here.

IV. CONTRACTOR RESPONSIBILITY AND TASK

1. Authorized Dealers / Distributors Only manufacturer Offerors with strong dealer networks in multiple states are asked to respond directly to this RFP and will be named on the award of the Master Agreement. The awardees of the resulting Master Agreements will be responsible for all reporting, management fees required, and the individual Participating Addendums executed. The manufacturer will offer users of this contract set discount levels, which may be sold and serviced at the dealer level. Any interested equipment dealer is highly encouraged to connect with their manufacturer and ensure they have been named as an authorized dealer / distributor. Attachment Q, Authorized Dealer Worksheet Distributors by State, does list authorized dealer / distributors and will be part of the evaluation process to ensure adequate local supply is addressed as well as shipping and delivery options.

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

A. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below: (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $5 million per occurrence. (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

B. Offeror / Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

C. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

D. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order

3. Licensing

A. Sales of motor vehicles are subject to state Motor Vehicle Statutes. Offeror certifies by submission of a response that all required Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses, if requested, will be submitted with the states' participating addendums.

B. License requirements for states participating in the contract will be addressed in each state's participating addendum.

C. It is the Contractor's responsibility to keep all required Motor Vehicle licensing current during the term of the contract and to furnish copies at any time upon request by the contract administrator. If the Contractor does not maintain current licensing, Central Purchasing may immediately terminate the contract upon discovery of the expiration of the license. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

4. Ordering

A. No minimum orders will be considered under this Contract. Please see the pricing attachment for value-added incentive volume discount request.

B. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Contractor's manufacturer/dealer for the basic equipment being purchased. Contractor shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

C. Any trade-in allowances determined by the Contractor shall be deducted from the established current price before the discount is applied. The formula will be to deduct the discount from the established

current price and then take off the trade-in allowance. (Only for those Purchasing Entities allowed to trade-in equipment for new equipment).

5. Changes in Contractor Contact

The Contractor shall notify the Contracting Officer of any changes in the company status, such as mergers, sell offs, discontinuation of equipment, addition of equipment lines and changes in the contact information of the Contract. The Contracting Officer shall be able to contact the Contractor at all times during business hours.

6. Contract Provisions for Orders Utilizing Federal Funds.

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

7. Warranty-Equipment/Options/Accessories/Attachments

A. The Contractor agrees the products furnished under this Contract shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded by any other clause of this Contract.

B. The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract.

C. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the Purchasing Entity contact person prior to installation.

D. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity.

E. Offeror shall furnish a copy of their warranty applicable for the equipment. All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty.

F. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment: (1) Name of Purchasing Entity and division, if applicable. Make, Model, and VIN of equipment Control number of Purchasing Entity (Inventory number)

G. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

H. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work.

I. All persons utilized in the performance of this contract shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

J. Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor

shall be responsible for the proper care and custody of any state-owned equipment in the Contractor's possession.

8. **Quality of Parts**

A. Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the Purchasing Entity contact person.

B. After Market Repair parts must be equal to or exceed Contractor's original equipment manufacturer's specifications. Repair parts must be packaged and distributed under their respective nationally known name brands.

C. All rebuilt or remanufactured parts must meet the same requirements as listed above.

D. Some repair parts may be required to be original equipment manufactured repair parts. Contractor's dealers' network must carry a complete line of OEM parts for all models of equipment they carry.

E. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

9. Warranty/Buy Back

Contractor is required to provide any buy-back, trade-in, or exchange policy concerning repair parts sold to Purchasing Entities. Contractor shall correct ordering errors without further cost to the ordering entity. A copy of the Warranty shall be included for replacement parts purchased.

10. Repair Facilities

Repair facilities that will perform the warranty work of items under this Contract shall be identified as listed on the Contractor's dealer network. As the manufacturer, the Contractor is responsible for ensuring that the facilities adhere to the contract requirements for warranty work performance.

11. Freight/Shipping/Set-up Fees

A. Freight from the factory to the distributor is the responsibility of the Contractor. Freight from the distributor to the customer is an allowable charge.

B. Delivery is to be FOB Destination (of ordering entity) freight collect

C. Any Freight, shipping and handling costs and set-up fees paid by the ordering entity are to be annotated on the quote/invoice as a separate line item.

12. Delivery

A. Delivery of equipment shall be stated in each quotation. It is preferable to expect delivery within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Contractor due to current market status. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery.

B. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Contractor until delivered and accepted.

C. Delivery shall be made in accordance with instructions on the purchase order from each Purchasing Entity. If there is a discrepancy between the purchase order and what is listed on the contract, the Con tractor shall seek clarification from the ordering party and/or the Contracting Officer.

D. Delivery on parts is to be made within 30 days or otherwise stated in quotation.

E. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost.

F. All ordering entities will have the option to pick up their equipment from the dealer.

13. Price Adjustments

The Contract price shall be the most current Contractor's Manufacturer's Suggested Retail Price (MSRP) in effect at the time the order is placed less the discount percentage offered. This allows for market fluctuations to take place while the discount percentage must remain stable.

The Contractor will be required to notify the Contracting Officer (Lead State) for review and approval when new pricing updates occur and an explanation of what has prompted the change as well as documentation to support the price increase. Documentation may include: the manufacturers national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase.

The price increase must not produce a higher profit margin than the original contract and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

Price Established at Time of Order. Pricing is established at the time an order is placed by a public entity with the Contractor. No retroactive price increases will be allowed, nor will price increases be allowed at time of delivery.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

14. New Products

New Products may be added to the awarded categories as they are introduced as long as the products remain within the scope of that category. The quoted discount cannot be lowered throughout the Contract period.

15. Discontinued Products

Contractor is to notify the Contracting Officer of any changes in their schedule of equipment such as discontinued products or replacement models to continue proper presentation on contract award posting.

16. Price

The purpose of this competitive solicitation is to develop a category / catalog discount contract structure to provide for equipment to be made available for purchase. This allows for the most current model of equipment to be covered under this contract as equipment is introduced to stay with available market trends. The pricing matrix is a percentage discount subtracted from the Contractor's Suggested Retail Price. Contractor can submit actual pricing schedules for their equipment with the percentage discount already figured, as long as the Contractor list price is stated first, then the discount, then the final discount price. If you have products that can be fueled by means other than gas or diesel fuel, and that are considered environmentally friendly, please include them in your response.

The quoted discount percentage will be in affect the entire contract period. Additional or deeper discounts will be accepted, but original discount rates cannot be lowered.

17. Value Added Contract Items

Value Added Items have been included with Attachment I, Cost Proposal:

• Ground Maintenance Equipment Value Add

As a value-added option, vendor may specify contract items which will qualify as priority, bestselling, higher usage items, or a special “hot” list or “contract offering” based on a deeper discount.

Due to the large variance of equipment available, and as the subject expert, the vendor may choose the items to offer.

This product listing will allow the vendor to represent the type, style, quality, and breadth of equipment options available if awarded. This list will remain firm for the initial base year, with the option to refresh or revise the listing of contract special items on an annual basis at contract renewal periods.

V. LEAD STATE RESPONSIBILITIES AND TASKS

Participating State Terms and Conditions. (ADMIN) As a courtesy to Offerors, some Participating States’ specific Terms and Conditions are provided as Attachments (see Attachment E) to this solicitation. These are for informational purposes only and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendums. Offerors shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum

Attachment C
RFP EVALUATION PLAN

Stage 1: Initial Responsiveness Evaluation. Proposals will be reviewed for completeness and initial responsiveness.

Proposals omitting required documents or responses may be rejected in accordance with Attachment A, RFP Terms and Conditions.

Stage 2: Mandatory Minimum Requirements Evaluation. Complete and responsive proposals will be reviewed for compliance with the following Mandatory Minimum Requirements:

Criteria	Evaluation	Result
Original Equipment Manufacturer	Pass/fail	
Dealer Network	Pass/fail	
References	Pass/fail	
	Stage 2 Result:	

Proposals failing to meet or exceed all Mandatory Minimum Requirements may be rejected in accordance with Attachment A, RFP Terms and Conditions.

Stage 3: Technical Criteria Evaluation. Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the following Technical Criteria:

Criteria	Technical Points Possible	Offeror's Technical Points Earned
Experience and Qualifications	200	
Ability to meet SOW	200	
Warranty and Service	100	
Product Selection/Availability/Value Add items	100	
Implementation and Promotion of the NASPO ValuePoint Master Agreement	100	
Stage 3 Total:	**700**	

Upon final technical evaluation, all vendors who scored at least 75% of available points will move on to the Stage 4 Cost Evaluation.

Stage 4: Cost Evaluation. Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated.

PROPOSED COSTS

Cost Item	Lowest Cost	Offeror's Cost	Cost Points Possible	Offeror's Cost Points Earned
Market Basket Evaluation			200	
Discount % Off Evaluation			100	
		Total:	**300**	

a. Market Basket Evaluation In this portion of the Cost Evaluation there are 200 points available. The proposed "Extended Price" for the Category will be compared against the other Offerors' Extended Price to the Category. Categories that include sub-categories will first have the Extended Price averaged to

then arrive at an Extended Price for the Category, and then applied in the cost evaluation. The formula for calculating cost points earned for this portion is Lowest Extended Price / Offeror's Extended Price x 200. The Lead State reserves the right to modify this formula and/or assign a nominal value to "0" cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points

b. Discount % Off Evaluation In this portion of the Cost Evaluation there are 100 points available. The proposed discount percentages (%) will be averaged across each category to determine the highest average discount % off. The highest average discount % will be used as a baseline to assign the available cost points to the other vendors. The formula for calculating cost points earned for this portion is Offeror's Average Discount / Highest Average Discount x 100. The Lead State reserves the right to modify this formula and/or assign a nominal value to "0" cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points

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

Evaluation Summary

Stage	Total Points Possible	Offeror's Total Points Earned
Technical Criteria Evaluation	700	
Cost Evaluation	300	
Total:	**1,000**	

Award Selection

All Offerors earning a minimum of 600 points combined from the Technical Criteria Evaluation and Cost Evaluation will be eligible for a Master Agreement award. The proposal of any Offeror not earning the minimum of 600 points combined from the Technical Criteria Evaluation and Cost Evaluation will be rejected.

The Lead State and Multistate Sourcing Team will then determine which proposals are most advantageous to the Lead State and potential Participating Entities and Purchasing Entities. Methods used to make this determination may include, but are not limited to, one or more of the following:

- Identification of a natural break in total scores
- Consideration of the optimal number of Contractors required to successfully supply Deliverables to Participating Entities and Purchasing Entities

Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to NASPO ValuePoint for approval of the proposed awards.

Following approval of NASPO ValuePoint and the Commonwealth of Virginia, a public Notice of Intent will be posted on Virginia Business Opportunities (cgieva.com) for a minimum of 10 days.

Attachment D
SAMPLE MASTER TERMS AND CONDITIONS

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA").
(2) NASPO ValuePoint Master Agreement, including all additions thereto.
(4) Statement of Work;
(5) Schedules and Attachments expressly incorporated into this contract;
(6) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions.
(7) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No terms on either party's Purchase Orders, Invoices, Ordering Documents, Website, Browse-Wrap, Shrink-Wrap, Click-Wrap, Clickthrough, or other Non-Negotiated Terms and Conditions provided with any contract activities will constitute a part or amendment of this Agreement or is binding for any purpose. All such other Terms and Conditions have no force and effect and are deemed rejected, even if access to or use of the contract activities requires affirmative acceptance of such Terms and Conditions

2. Definitions

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State

Order or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

Product means any equipment, software (including embedded software), documentation,

service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

a. The initial term of this Master Agreement is for 2 years. This Master Agreement may be extended beyond the original contract period for 3 additional years, with three separate 1 year extensions, at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO ValuePoint is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale**. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales

of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including (if applicable) pricing for each: chassis, body/equipment item, and installation by product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and

must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is Microsoft Excel or equivalent.

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

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

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

8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Price and Rate Guarantee Period

Price and rate guarantee period information is outlined in **Sections B4.11, B4.12, & B4.13 (Attachment B).**

11. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

12. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement

and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

13. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

14. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

15. Inspection and Acceptance

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its

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

16. Payment

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software

license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

General Provisions

19. Insurance

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

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the

applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order

20. Records Administration and Audit

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

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

21. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the

obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating

State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

22. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

23. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

24. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

25. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

26. Cancellation

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

27. Force Majeure

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

28. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

(1) Nonperformance of contractual requirements; or

(2) A material breach of any term or condition of this Master Agreement; or

(3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or

(4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

(5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

(1) Exercise any remedy provided by law; and

(2) Terminate this Master Agreement and any related Contracts or portions thereof; and

(3) Impose liquidated damages as provided in this Master Agreement; and

(4) Suspend Contractor from being able to respond to future bid solicitations; and

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

29. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

30. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

31. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim

that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

32. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state

of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

33. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

34. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

35. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

36. Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the

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

Attachment E
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 Ground Maintenance contractors through NASPO ValuePoint Master Agreements over the past four (4) calendar years:

Year	Reported Historical Sales Volume
2020	$8,490,000
2021	$12,300,000
2022	$26,400,00
2023	$40,220,000

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

Interested States

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

Interested States	Reported Estimated Annual Volume	Sample Participating Addendum Terms and Conditions
Kansas	5 million	N/A
Montana	300,000	Exhibit 1
North Dakota	Unknown	N/A
South Dakota	1.5 million	N/A
Hawaii	1.1 Million	Exhibit 2
Nevada	Unknown	N/A
Utah	6.7 Million	Exhibit 3
Oregon	1.1 Million	N/A
Alaska	2.2 Million	Exhibit 4
Rhode Island	110,000	Exhibit 5

TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: $14.7 million

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

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

Attachment A:

State's Modifications and Additions to Master Agreement Terms and Conditions

The following terms and conditions govern during the term of the Participating Addendum (PA).

1. PAYMENT TERM

All payment terms are computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. State is allowed 30 days to pay such invoices. All contractors are required to provide banking information at the time of PA execution in order to facilitate State electronic funds transfer payments.

Withholding of Payment. State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

2. U.S. FUNDS

All prices and payments must be in U.S. dollars.

3. REFERENCE TO PA

The Purchase Order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the PA contract.

4. STATE OF MONTANA ADMINISTRATIVE FEE

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

5. REQUIRED REPORTING

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

First Quarter:	July 1 through September 30;
Second Quarter:	October 1 through December 31;
Third Quarter:	January 1 through March 31; and
Fourth Quarter:	April 1 through June 30.

6. TAXES

6.1 Payment. Contractor shall pay all property and sales taxes, if any.

6.2 Exemption. State of Montana is exempt from Federal Excise Taxes (#81-0302402), except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.I. 111- 148, 124 Stat. 119].

6.3 Certificate. All purchasers under this PA shall provide Contractor with a tax exemption certificate for all purchases.

7. DELIVERY

In addition to the Master Agreement Shipping and Delivery Section, Contractor shall:

- Prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate; and
- Furnish a delivery schedule and designate the mode of delivery carrier.

8. INSURANCE

Contractor shall provide the Participating Entity the same insurance as it has provided the State of Idaho in the Master Agreement and include the Participating Entity as an additional insured on these policies as it has the State of Idaho. Electronic delivery of certificates of insurance and any endorsements shall be sent to the Primary Contact for the Participating Entity.

Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.

9. RECORD ACCESS AND RETENTION

9.1 Access to Records. Contractor shall provide State, the Montana legislative auditor, or its authorized agents access to any records necessary to audit for Contract compliance. State may terminate this Agreement, without incurring liability, for Contractor's refusal to allow access as required by this Section. (18-1-118, MCA.)

9.2 Retention Period. Contractor shall retain all records related to this Contract for 8 years following the termination or expiration of this Contract.

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Contractor shall not assign, transfer or subcontract any portion of this Contract without the express written consent of State, which shall not unreasonably withhold consent. (Section 18-4-141, MCA.)

11. WARRANTIES

11.1 Warranty of Products

Contractor shall provide the Participating Entity the same warranties as it has provided the State of Idaho in the Master Agreement and the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for the same warranty period as Contractor provide the State of Idaho in the Master Agreement. Contractor further warrants that the products are new and unused and of the latest model or manufacture.

11.2 Warranty of Services

Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

11.3 Warranty of Title

Contractor warrants all Goods are free and clear of any liens or encumbrances, Contractor has full legal title to the Goods, and that no other person or entity has any right, title, or interest in the Goods which the rights granted to the Participating Entity.

11.4 Warranty on Safety and Health Requirements

Contractor warrants that all Goods comply with all applicable health and safety standards, including Occupational Safety and Health Administration (OSHA) health and safety standards.

11.5 Manufacturer Warranties

Contractor shall transfer all manufacturer warranties covering the Goods, if any, transferred to the Participating Entity at time of delivery at no charge.

11.6 Warranties Cumulative

The warranties in this Section are in addition to any other warranties provided in this Contract. All warranties are cumulative and are intended to afford the Participating Entity the broadest warranty protection available.

11.7 Warranty For Services

A. Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract.
B. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.
C. Contractor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorization for Contractor to provide the Services described in this Contract.
D. Contractor will not interfere with State's access to and use of the Services it acquires from this Contract.
E. The Services provided by Contractor are compatible with and will operate successfully with any environment (including web browser and operating system) specified by Contractor.
F. Contractor warrants that the products it provides under this Contract are free of malware. Contractor must use industry-leading technology to detect and remove worms, Trojans, rootkits, rogues, dialers, spyware, etc.
G. The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

12. PUBLIC INFORMATION

This Contract and all related documents are subject to disclosure pursuant to Montana public information laws. Unless protected by a State exception to public disclosure, State of Idaho's Master Agreement Sections 14.2 Confidentiality, 14.2.2 Nondisclosure, and 14.3 Injunctive Relief are specifically not incorporated herein. Under Montana public information laws, unless information meets an exception to the public's right to know, this Contract, referenced documents, including pricing documents, are all deemed public information.

13. CIO OVERSIGHT

The Chief Information Officer (CIO) for the State of Montana, or designee, may perform oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur while performing services. The CIO may require the issuance of a right to assurance or may issue a stop work order.

14. RIGHT TO ASSURANCE

If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under these Terms and Conditions, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than

five business days) may, at State's option, be the basis for termination and pursuing the rights and remedies available to State.

15. STOP WORK ORDER

State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the required work for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a Stop Work Order issued under these terms and conditions. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a Stop Work Order issued under these terms and conditions is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Contract Manager shall make the necessary adjustment in the delivery schedule or price, or both, and the services shall be amended in writing accordingly.

16. BLIND OR VISUALLY IMPAIRED

No state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

17. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

17.1 Indemnities by Contractor

Contractor, at its sole cost and expense, shall defend, indemnify and hold harmless the State of Montana, the contracting agency, or their officers, officials, directors, agents, employees, volunteers, contractors, successors, assignees, or designees from any and all liability, actions, claims, demands, causes of actions, judgments, suits, settlements, penalties, or fines, and all related costs, court costs, attorney fees, expert fees, and other expenses, arising out of, resulting from, or related to:

A. Any acts or omissions of Contractor, its employees, sub-contractors, assignees, or third-party providers in or in connection with the execution or performance of the Contract and any purchase order issued under the Contract, except for the sole negligence of State.

B. Any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in or in connection with the execution or performance of the Contract and any purchase orders issued under the Contract, or

C. Tax liability, unemployment insurance, workers' compensation, or expectations of benefits by Contractor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.

17.2 Coordination of Defense

State shall give Contractor prompt notice of any Claim, and at Contractor's expense, State shall cooperate in the defense of the Claim. Contractor acknowledges that under Montana law, the Montana Attorney General may participate in an action involving State.

17.3 State Reimbursement

If Contractor fails to comply with its defense obligations under this Section, State may undertake its own defense. If State undertakes its own defense, Contractor shall reimburse State for all costs to State resulting from: (1) settlements, judgments, losses, damages, liabilities, and penalties, fines; and (2) defense of the Claim, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.

18. LIMITATION OF LIABILITY

Contractor shall provide the Participating Entity the same limitation of liability as it has provided the State of Minnesota in the Master Agreement.

19. COMPLIANCE WITH LAWS

In performing its duties in this Contract, Contractor shall comply with all applicable federal, state, or local laws, rules, ordinances, policies, and executive orders. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that:

A. the hiring of persons to fulfill Contractor's duties in this Contract will be made based on merit and qualifications; and

B. there will be no discrimination based on race, color, sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

Any subcontracting by Contractor obligates subcontractors to the above.

Nondiscrimination Against Firearms Entities/Trade Associations. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate

during the term of the Contract against a firearm entity or firearm trade association. This Section shall be construed in accordance with 30-20-301, MCA.

20. CONTRACT TERMINATION

20.1 Termination for Convenience

State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

20.2 Termination for Cause with Notice to Cure Requirement

Either party may terminate this Contract for the other's failure to perform any of its duties under this Contract after giving written notice of the failure to the other. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

20.3 Reduction of Funding

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

21. Terrorism, Suspension or Debarment, or Otherwise Ineligible

State has the absolute right to terminate the Contract without recourse in the following circumstances:

A. Contractor is listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;
B. Contractor is suspended or debarred from doing business with the federal government as listed in the System for Award Management maintained by the General Services Administration; or
C. Contractor is found to be ineligible to hold the Contract under the laws of State.

22. EVENT OF BREACH – REMEDIES

22.1 Event of Breach by Contractor

Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

Products or services furnished fail to materially conform to any requirement;
Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching Section 25.1, Technical or Contractual Problems, obligations; or Voluntary or involuntary bankruptcy or receivership.

22.2 Event of Breach by State

State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

22.3 Actions in Event of Breach

Upon Contractor's material breach, State may:

A. Terminate this Contract under Section 20.1, Termination for Convenience and pursue any of its remedies under this Contract, at law, or in equity; or
B. Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.
C. Upon State's material breach, Contractor may:
    a. Terminate this Contract under Section 20.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
    b. Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

22.4 WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate

remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

23. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

24. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

25. MEETINGS

25.1 Technical or Contractual Problems.

Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

25.2 Progress Meetings

During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other

additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

25.3 Failure to Notify

If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

25.4 State's Failure or Delay

For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

26. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

Contractor shall verify on the Purchase Order that any purchase under this Participating Addendum does not use federal grant money. This Section is only applicable until Contractor and State mutually agree on Federal Terms and Conditions.

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

Nothing in these provisions shall be construed as a waiver of the sovereignty or governmental immunity State enjoys, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or consent to jurisdiction based thereon.

28. AUTHORITY
This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

29. SEVERABILITY
A declaration by any court or any other binding legal source that any provision of the Contract is illegal, and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

30. WAIVER
State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

31. PUBLIC DISCLOSURE
Contractor may publicize the Contract term, scope and price without prior written approval. However, Contractor may not use the State seal, any State logo, or claim any State endorsement as to the Contract without prior written approval by State.

32. SURVIVAL
All provisions in this Contract that relate to warranties, Audit, Payment, Indemnification, Defense, and Hold Harmless, and Limitation of Liability, shall survive any termination of this Contract.

(*The remainder of this page is intentionally left blank)*

NASPO ValuePoint

PARTICIPATING ADDENDUM

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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

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

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

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

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

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

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

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

Contractor

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

NASPO ValuePoint
PARTICIPATING ADDENDUM

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) 586-0570
Email:	specialist e-mail address

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

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

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

Changes:

A. eProcurement System and Marketplace

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

i. Remittance of the VCAF – On a quarterly basis, and at the same time as the submission of the Quarterly Sales Report per the above, the Contractor shall remit the VCAF via Automated Clearing House (ACH) transaction directly to Periscope using the Reconciler portal, or as otherwise reasonably directed by Periscope or the State, no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end September 30, December 31, March 31, and June 30 of each year. Periscope's or the State's receipt or

acceptance of any Quarterly Sales Report and/or VCAF furnished pursuant to the Contract shall not preclude Periscope or the State from challenging the validity thereof at any time. Failure to remit the Quarterly Sales Report and/or VCAF timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the Aloha eBuys marketplace. Continued non-compliance by the Contractor may result in the Contractor being found in default of the Contract and, thus, may be subject to termination. Assistance with VCAF remittance is available from the Periscope Customer Service by email or telephone, which contact information shall be providing during Contractor's onboarding.

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

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

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

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

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

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

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

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

B. Quarterly Sales Reporting. The Contractor shall be required to submit a quarterly report documenting all Sales made under the Contract ("Quarterly Sales Report"). ''Sales'' shall mean total invoices for gross purchases, less any credits, taxes, regulatory fees, and separately stated shipping charges not included in unit prices, procured on or utilizing pricing and/or other terms of this Contract, regardless of the purchase process. The Quarterly Sales Report shall be submitted directly to Periscope using the Reconciler portal (Periscope's reporting tool to which a link shall be provided to Contractor), or otherwise as reasonably directed by Periscope or State. Quarterly Sales Report will include any periods less than a full calendar quarter if Amendment and/or Contract does not start at the first day of a quarter or end on the last day of the quarter.

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

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

The Quarterly Sales Report must contain the following information:

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

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

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

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

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

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

F. 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.

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

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

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

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

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

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

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/.

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

J. Licensing

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

K. Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and its Subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether

such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

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

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

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

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

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

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

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/vendor list.

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

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

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

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

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

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

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

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

Invoices and Payment Instructions:

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

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

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

10. Participating Entity as Individual Customer:

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

NASPO ValuePoint
PARTICIPATING ADDENDUM

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

11. Entire Contract:

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

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

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

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

APPROVED AS TO FORM:

Deputy Attorney General

NASPO ValuePoint

PARTICIPATING ADDENDUM

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Name
Telephone:	Phone
Email:	email

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

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

GENERAL CONDITIONS

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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 section103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

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

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

3. Personnel Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

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

(1) Cancel the stop performance order; or

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

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

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

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

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

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

13. Termination for Default.

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

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

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

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

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

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

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

14. Termination for Convenience.

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

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

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

(1) Any completed goods or work product; and

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

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

d. Compensation.

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

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

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

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

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

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

(D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Payment Procedures; Final Payment; Tax Clearance.

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

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

c. Prompt payment.

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

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

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

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

19. Modifications of Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Method of delivery; or

(3) Place of delivery.

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

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

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

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

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

21. Price Adjustment.

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

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

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

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

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

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

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

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

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

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

(1) Description of performance (Attachment 1);

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

(3) Place of performance of services;

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

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

(6) Place of delivery.

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

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

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

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

24. Confidentiality of Material.

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

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

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

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

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

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

a. The cost or pricing data, and

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

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

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

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

31. Records Retention.

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

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

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

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

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

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

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

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

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

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

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

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

42. Confidentiality of Personal Information.

a. Definitions.

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

(1) Social security number;

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

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

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

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

b. Confidentiality of Material.

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

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

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

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

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

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

c. Security Awareness Training and Confidentiality Agreements.

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

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

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

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

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

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

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

(2) Immediately terminate this Contract.

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

e. Records Retention.

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

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

SPECIAL PROVISIONS

(REQUIRED FEMA DISASTER PROVISIONS)

1. Administrative, Contractual, or Legal Remedies

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

2. Termination for Cause and for Convenience

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

3. Equal Employment Opportunity

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

> (A) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
>
> Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
>
> (B) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

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

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

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

(H) Contractor also agrees to include the following language in every subcontract or purchase order (unless exempted by rules, regulations, or orders of

the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965), followed by the provisions of subparagraphs (A) through (G) in this paragraph 3, so that such provisions will be binding upon each subcontractor or vendor.

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

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

4. Davis-Bacon Act

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

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

5. Contract Work Hours and Safety Standards Act

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

6. Clean Air Act and Federal Water Pollution Control Act

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

7. Energy Efficiency

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

8. Excluded Parties List System

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

9. Byrd Anti-Lobbying Amendment

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

10. Recovered and Recycled Materials

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

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

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

12. Domestic Preferences for Procurements

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

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

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
   a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
   b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
   c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
   d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
   e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
   f) "**Division**" means the Division of Purchasing and General Services.
   g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
   h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
   i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
   j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
   k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
   l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
   m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
   n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.

6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
   a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

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

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

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

9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.

10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.

12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.

13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

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

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

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

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

is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

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

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

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

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

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

19. **RESERVED**.

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

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

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

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

23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time

of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

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

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

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

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

    1. Contractor has received payment for the Custom Deliverables,

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

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

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

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

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

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

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

31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES**: Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized

areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE**: Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION**: The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE**: The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ACTIONS**: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of

this Contract, and that if it does, it shall promptly notify the State in writing.

(Revision Date: 7/20/2023)

State of Alaska Specific Terms and Conditions

Termination.
The Procurement Officer may, by written notice, terminate this contract under Alaska Administrative Order No. 352 if the contractor supports or participates in a boycott of the State of Israel.

Administrative Fee
Contractor agrees to provide an Administrative Fee to the State of Alaska.

a) Contractor shall submit a check, payable to the State of Alaska, remitted to the Department of Administration, Division of General Services for the calculated amount equal to **1.5%** of the net sales for the quarterly period.

b) Contractor must include the PA Number on the check. Those checks submitted to the State without the PA Number will be returned to Contractor for additional identifying information.

c) Administrative fee checks shall be submitted to:

State of Alaska
Department of Administration
ATTN: Office of Procurement and Property Management
PO Box 110214
Juneau, AK 99811-0214

d) The administrative fee shall not be included as an adjustment to Contractor's Master Agreement pricing and shall not be invoiced or charged to the ordering agency.

e) Payment of the administrative fee is due irrespective of payment status on any orders from a Purchasing Entity.

f) Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
State Fiscal Quarter 1 (Jul 1 - Sept 30):	Nov 15
State Fiscal Quarter 2 (Oct 1 - Dec 31):	Feb 15
State Fiscal Quarter 3 (Jan 1 - Mar 31):	May 15
State Fiscal Quarter 4 (Apr 1 - Jun 30):	Aug 15

g) Any quarter with zero sales must be reported as zero sales. This may be done electronically via email to the State of Alaska contact listed in this PA.

220-RICR-30-00-13

TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 30 – PURCHASES

SUBCHAPTER 00 – N/A

PART 13 – General Conditions of Purchase

13.1 Purpose

The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the State of Rhode Island ("State") and a Vendor. These General Conditions, along with items specified in § 13.4 of this Part herein, shall serve as the Contract with the State regardless of the method of procurement.

13.2 Definitions

A. For the purposes of this Part, the following definitions shall apply:

1. "Contract" means a Purchase Order, Purchase Agreement, and/or Letter of Authorization issued by the Division, along with any and all contractual documents incorporated by reference by the Division.

2. "Purchase agreement" means a written document formally issued by the Division to a Vendor that binds the parties to general terms, but does not represent a specific order for goods or services. A Purchase Agreement may include:

   a. A "Statewide purchase agreement" or "Master price agreement" or "MPA," which serves as an agreement for more than one agency, but does not include a specific quantity until a Purchase Order is issued; or

   b. An "Agency purchasing agreement," or "Agency pricing agreement," or "APA," which serves as an agreement for one agency, but does not include a specific quantity until a Purchase Order is issued;

3. "Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the Division indicating a desire to enter into contracts with the State of Rhode Island, or with whom a Contract is executed by the State Purchasing Agent.

B. All other terms contained in the State Purchases Act and State Procurement Regulations and used herein shall have the same meanings.

13.3 Procurement Process

A. Pricing

All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary in the Purchase Order or Purchase Agreement.

B. Cost of Preparation

All costs associated with the preparation, development and submission of bids or proposals and/or protests arising therefrom, in response to solicitations issued on behalf of the State, shall be the Vendor's sole responsibility. The State will not reimburse any Vendor for such costs.

C. Selection

1. Vendor bids and proposals shall be evaluated and Purchase Orders or Purchase Agreement issued with reasonable promptness and by written notice to the successful Vendor (only); bids and proposals are considered to be irrevocable for a period of sixty (60) days following the opening date unless expressly provided for to the contrary in the solicitation document, and may not be withdrawn during the specified period without the express written permission of the State Purchasing Agent.

2. The State reserves the right, before making an award, to initiate investigations as to whether or not the materials, equipment, supplies, services, qualifications, integrity, capability, capacity, and/or facilities offered by the Vendor meet the requirements set forth in the solicitation and are ample and sufficient to ensure the proper performance of the Contract in the event of award. Failure to pay subcontractors on previous Vendor Contracts may be considered (also see § 13.5 of this Part herein). If upon such examination it is found that the conditions of the solicitation are not complied with, and/or that the goods or services proposed to be furnished do not meet the requirements called for in the solicitation, and/or that the services, qualifications, integrity, capability, capacity and/or facilities of the Vendor are not satisfactory, then the State may reject Vendor's bid or proposal at the State's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before issuance of a Purchase Order or Purchase Agreement. If such examination is made, it in no way relieves the Vendor from fulfilling all requirements and conditions of the Contract.

3. Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the solicitation, offers for alternate specifications, or offers which are made subject to different terms and conditions, including form contracts, other than those specified by the State may be, at the sole discretion of the State Purchasing Agent:

   a. Rejected as being non-responsive; or,

   b. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or,

   c. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State.

   d. Acceptance or rejection of alternates or counter-offers by the State Purchasing Agent shall not constitute a precedent and shall not be considered to be binding on successive solicitations or procurements.

4. Vendor bids and proposals must bear an authorized signature or certification in a form approved by the State Purchasing Agent. Vendor bids and proposals which do not bear the required signature or certification may be deemed to be non-responsive to the solicitation. Bids submitted in pencil will not be accepted.

5. Vendor bids and proposals must utilize the unit of measure specified in the solicitation. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.

6. The State Purchasing Agent reserves the right to determine whether a Vendor's bid or proposal is Responsive to a solicitation and whether a Vendor is Responsible.

7. The State Purchasing Agent reserves the right to reject any and all bids or proposals in whole or in part, to waive technical defects, irregularities, and omissions, to give consideration to a Vendor's past performance where, in the State Purchasing Agent's judgment, the best interest of the State will be served, to require additional competitive negotiations and/or to issue a request for best and final offers.

8. The State Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the solicitation, unless the Vendor expressly indicates otherwise in its bid or proposal that doing so is not acceptable.

9. Preferences may be given as authorized by law or regulation, including, but not limited to, the following:

a. Preference may be given to bids for products raised or manufactured in Rhode Island, in the event that all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or service provider whose headquarters or primary place of business is located within the State, or in the event of a joint venture with a Vendor or service provider whose headquarters or primary place of business is within the State, shall receive preference.

b. MINORITY BUSINESS ENTERPRISES - Pursuant to the provisions of R.I. Gen. Laws Chapter 37-14.1 reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

(1) The offer is fully responsive to the terms and conditions of the Request;

(2) The price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service;

(3) The firm making the offer has been certified by the R.I. Department of Administration, Office of Diversity Equity and Opportunity to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. A minimum of ten percent [10%] of the dollar value of the work performed against contracts shall be performed by certified Minority Business Enterprises where it has been determined that subcontract and/or supply opportunities exist, and where certified Minority Business Enterprises are available. A vendor may count 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE certified as a regular dealer or supplier, and 100% of such expenditures when obtained from an MBE certified as a manufacturer, towards the MBE participation requirement under R.I. Gen. Laws § 37-14.1-6. For materials or supplies obtained from firms certified as a broker or manufacturer's rep, vendors may receive MBE participation credit only for the fees and commissions charged for the procurement of the goods and materials, but not the cost of the materials themselves. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

10. The State Purchasing Agent reserves the right to act in the State's best interest regarding awards caused by clerical errors or omissions by the Division.

11. Any Contract issued by the Division is subject to the resolution of any timely bid protest.

12. Any objections to specifications or requirements in a solicitation must be received by the Chief Purchasing Officer in accordance with State Procurement Regulation (§ 1.6 of this Subchapter).

D. Public Records

Vendors are advised that all records submitted to the Division may be subject to disclosure in accordance with the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq*. and/or in the course of litigation through discovery. Any records submitted which a Vendor believes are of a privileged or confidential nature or are not subject to disclosure in accordance with R.I. Gen. Laws § 38-2-2 or other applicable laws, should be clearly marked. The Vendor should provide a brief explanation as to why each portion of information marked as confidential or privileged should be withheld from public disclosure and cite the specific provision of R.I. Gen. Laws § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the Division and/or agency and/or public institution of higher education will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

In all solicitations, the words "or equal" shall be understood to apply to each article when a manufacturer's name or catalog are referenced unless the solicitation specifically states "no substitutions." When submitting a bid or proposal which includes items other than those specified in the solicitation, the Vendor must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the Vendor proposes to furnish; otherwise, the bid or proposal shall be construed as being submitted for the identical commodity described in the solicitation. The State Purchasing Agent reserves the right to determine whether or not the substitute item(s) offered by the Vendor is an approved equal to the item(s) specified in the solicitation.

1. All standards are minimum standards except as otherwise provided for in the solicitation.

2. Samples must be submitted to the Division of Purchases in accordance with the solicitation. Samples must be furnished free of charge with the understanding that they shall not be returned to the Vendor.

3. All samples submitted by Vendors may be subject to examination or testing by any laboratory the State Purchasing Agent may designate.

F. COLLUSION - Vendor warrants that it has not, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of full competitive bidding.

G. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

13.4 Entire Agreement

A. Incorporation

The Purchase Order, Purchase Agreement or Letter of Authorization issued by the Division, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the State and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:

1. The "State Purchases Act," R.I. Gen. Laws § 37-2-1, *et seq.*;
2. The Procurement Regulations adopted pursuant thereto;
3. The Vendor Certification Cover Form;
4. All other applicable provisions of the Rhode Island General Laws and applicable federal laws;
5. The specific requirements described in the solicitation and related solicitation documents;
6. These General Conditions of Purchase, along with applicable addenda as referenced in § 13.34 of this Part herein; and
7. The offer/proposal submitted by Vendor and accepted by the State.

B. Order of Precedence

Unless otherwise approved by the State Purchasing Agent, in the event of any express conflict or dispute regarding a Vendor's proposal, a Vendor's proposed standard terms of sale, the solicitation documents, statutes, regulations and/or these General Conditions of Purchase, the following order or precedence shall generally apply (with 1 being the highest level of precedence):

1. Federal laws and/or regulations (for federally funded contracts only)

2. Rhode Island General Laws;

3. State Procurement Regulations (Parts 1 through 13 of this Subchapter), General Conditions of Purchase and contract Addenda in addition to the General Conditions ("GC Addenda") (§ 13.34 of this Part);

4. The Purchase Order or Purchase Agreement issued by the Division;

5. The offer, proposal or bid submitted by the Vendor and to the extent accepted by the Division;

6. Solicitation documents issued by the Division; and

7. To the extent allowed by law, for an individual procurement, the State Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the State and/or to protect the health, safety and welfare of the State and its citizens.

C. Contract Contingencies

1. All Contracts are subject to the following:

   a. All material communication between the State and any Vendor pertaining to any solicitation, award or management of a Contract shall be set forth in writing.

   b. Vendor proposals shall be accepted by the Division with the understanding that the issuance of a Purchase Order, Purchase Agreement or Letter of Authorization shall be the only document which creates a binding Contract between the Vendor and the State. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver goods and/or services at the prices and in accordance with the conditions of Vendor's proposal. A Contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the Purchase Order. Additionally, any Contract shall be contingent upon the resolution of a timely bid protest.

   c. No alterations or variations of the terms of the Contract shall be valid or binding upon an agency, the State, or the Division unless

submitted in writing and accepted by the State Purchasing Agent thorough issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the Division. Oral agreements or arrangements made by a Vendor with anyone, including an agency or agency employee, shall not be binding upon an agency, the State or the Division unless and until reduced to writing and approved by the State Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.

d. Contracts shall remain in force for the term specified in the Purchase Order or Purchase Agreement or until all articles or services ordered before date of termination shall have been satisfactorily delivered or fully rendered and accepted by the State and thereafter until all terms and conditions have been met, unless:

(1) Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or

(2) Extended upon written authorization of the State Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or

(3) Canceled by the State in accordance with other provisions stated herein.

e. All Vendor obligations as described herein shall survive expiration, termination and/or cancellation of the Contract.

13.5 Relationship of Parties

The selected Vendor must be fully qualified and capable in all material respects to provide the specified goods and/or services. Unless specifically provided for in the solicitation, the Vendor shall be an independent contractor and not an employee, agent, partner or joint venturer with the State. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the State may consider Vendor non-payment of subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the State. If the solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.

13.6 Specified Quantity Requirements

A. Except where expressly specified to the contrary, all solicitations are predicated on a specified quantity of goods or services, or for a specified level of funding. Provided, however, that:

1. If stated in the solicitation, the State reserves the right to modify the quantity, scope of service, or funding of any Contract, with no penalty or charge, by written notice to the Vendor; and,

2. The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State shall not accept quantities greater than ten per cent [10%] of the specified quantity), or where the solicitation provides for other than exact quantities; and,

3. Quantities and performance periods set forth in a Purchase Order or a Purchase Agreement may be increased or extended with approval of the State Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the Division.

13.7 Term and Renewal

Where offers have been requested or Contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is subject to the appropriation of funding and is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive one-year terms, except where expressly specified to the contrary. Purchase Orders, Purchase Agreements, and/or Change Orders appearing to commit the State to obligations of funding or terms of performance in excess of twelve (12) months may be executed for administrative convenience, but are otherwise subject to this provision. In such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

13.8 Delivery

A. Delivery must be made as ordered and in accordance with the solicitation and Vendor's proposal. If delivery qualifications do not appear on the Vendor's proposal, then the proposal shall be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the State Purchasing Agent as to reasonable compliance with the delivery terms shall be final. The burden of proof for delay in delivery of an order shall rest with the Vendor. Except when authorized on the Purchase Order:

1. All prices shall be quoted F.O.B. destination, freight pre-paid with all transportation and handling charges paid by the Vendor;

2. Responsibility and liability for loss or damage shall remain with the Vendor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects, fraud and or Vendor's warranty obligations;

3. Deliveries shall be inside deliveries to other than a loading dock, front lobby or reception area and as designated in the Purchase Order; and,

4. Costs shall include all packaging and/or crating charges which shall be of durable construction, good condition, properly labeled and suitable for handling of contents.

13.9 Foreign Entities

In accordance with R.I. Gen. Laws § 7-1.2-1401, no business entity shall have the right to transact business in Rhode Island until it shall have procured a certificate of authority to transact business in the State from the Rhode Island Secretary of State. The term "Entity" means a corporation, a business trust, or association, a real estate investment trust, a common-law trust, a sole proprietorship or any other unincorporated business, or entity including a partnership, whether general or limited, (including a registered limited liability partnership), a foreign limited liability company, or as defined in R.I. Gen. Laws § 7-1.2-1401.

13.10 Product Acceptance

A. Quality

All goods offered or otherwise provided by Vendors shall be new, of the latest model or design, sourced from regular stock product inventories with all parts regularly used with the type of goods offered, without attachment(s) or part(s) substituted or applied contrary to manufacturer's recommendation and standard practice, of prime manufacture, and of first quality unless otherwise specified by the State.

B. Rejection of Nonconforming Goods

The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurement of services shall be construed to be work product, and subject to the provisions of this Section.

1. Failure by the State to discover latent defect(s) or concealed damage or non- conformance shall not foreclose the State's right to subsequently reject the goods in question.

2. Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive ordering, receipt, acceptance, or procurement of non-conforming goods.

3. If the Vendor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order. The State may then contract with a different Vendor and invoice the original Vendor for any differential in price over the original Contract price.

4. When materials, equipment or supplies are rejected, the same must be removed by the Vendor from State property within forty-eight (48) hours of notification, unless otherwise specified by the State. Rejected items left longer than forty-eight (48) hours or another time set by the State, shall be regarded as abandoned and the State shall have the right to dispose of those items at the Vendor's expense.

13.11 Ownership

Unless otherwise specifically provided for in the solicitation, General Conditions, or General Conditions Addenda, all data, material and documentation prepared for the State shall be considered work for hire and belong exclusively to the State.

13.12 Product Warranties

A. All product or service warranties normally offered by the Vendor shall accrue to the State's benefit, in addition to any special requirements or benefits which may be stated in the solicitation and/or additionally offered by the Vendor in its bid or proposal. During the term of any maintenance period, but for no less than one year from acceptance, the Vendor shall warrant:

1. The product or services shall perform according to the specific claims and representations made by the Vendor in its bid or proposal;

2. The services or product offered by the Vendor are suitable for the ordinary purposes for which such product is used or services provided;

3. The product or services offered by the Vendor are suitable for any special purposes identified in the solicitation or for which the State has relied on the Vendor's skill or judgment;

4. The product was designed and the services performed in a commercially reasonable manner; and,

5. The product or services are free from defects in material and workmanship.

B. The State shall give notice of a warranty claim to the Vendor in a commercially reasonable manner, upon which, the Vendor shall repair or replace at no cost to the State the product or services. If the repaired or replaced product or services prove to be inadequate, or fail of their essential purpose, the Vendor shall refund the full amount of any payments that have been made by the State. The rights and remedies of the State under this Section are in addition to any other rights and remedies (including cover) provided by law or equity. Any alternate warranties proposed by a Vendor are subject to the provisions of § 13.3(C)(3) of this Part.

13.13 Payment

A. Unless otherwise provided for in the solicitation, Purchase Order or Agreement, payment (subject to retention or set-off, if applicable) shall not be made by the State until goods and are delivered or services performed, in full, and accepted. After such acceptance, payment shall not be due until a properly submitted invoice, with satisfactory documentation, is delivered to the State. Payment then shall be made promptly in accordance with R.I. Gen. Laws § 42-11.1-1, *et seq.*:

1. Vendor payment terms other than as set forth herein may be rejected as being non-responsive.

2. No partial shipments will be accepted, unless provided for by the solicitation or Purchase Order.

3. Where a question of quality or performance is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the State Purchasing Agent.

4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount or rebate.

5. If not rejected, payments for used portion of inferior or defective goods shall be made by the State on an adjusted price basis.

6. Requests for payments on Contracts under architectural or engineering supervision must be authorized by the architect or engineer and submitted to the agency involved for approval.

13.14 Set-Off Against Payments

Payments due the Vendor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent State taxes (or other just debt owed to the State), except where notice of deficiency for trust fund taxes is not a final assessment and still open for a hearing request or while the tax deficiency notice is pending in administrative hearing or from any judicial appeal therefrom.

13.15 Claims

A. Setoff

Any claim against a Vendor may be deducted by the State from any money due it in the same or other transactions. If no deduction is made in such fashion, the Vendor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the State Purchasing Agent from demanding a price adjustment in any case when the good or service is delivered or is later found to deviate from the Contract.

B. Damages for Claims

The Purchasing Agent may assess dollar damages against a Vendor determined to be non-performing or otherwise in default of its contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification, rejection, and/or suspension. Vendor may appeal any assessment of damages in accordance with § 1.6 of this Subchapter.

13.16 Unused Balances

Unless otherwise specified, all unused quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term stated in the Contract. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

13.17 Confidentiality

A. "Confidential Information"

1. Whenever used in a Contract, the term "Confidential information" means:

   a. Information exempt from disclosure to the public or other unauthorized persons under either Rhode Island or federal statutes or regulations; or

   b. Information related to the State's infrastructure, operations, security, or personnel unless otherwise identified by the State in writing as non-confidential at the time of disclosure; or

   c. Any other information which the State has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or

d. State Data which includes User Data and the State's data used, processed, hosted, stored, or generated as a result of the Services. User Data means any and all information reflecting the access or use of the Services by or on behalf of the State or any authorized user, including any end user profile, visit, session, impression, information, click-through or click stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing; or

e. Information that would ordinarily be reasonably considered confidential or proprietary in the light of the circumstances surrounding disclosure.

B. Form of Confidential Information

1. Confidential Information may take the form of, but is not limited to, plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, any and all personal and/or confidential information pertaining to State employees and/or State personnel, including, but not necessarily limited to, any and all personal and/or confidential healthcare and/or health and/or medical data and/or any other similar and/or related personal and /or confidential information, pertaining to State employees and/or State personnel or any other material or information supplied by or on behalf of the State, State Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the State. Confidential Information may be in tangible or intangible form. The State's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Vendor's obligation to keep such information confidential in accordance with these terms.

2. Exemptions to Confidential Information

a. Notwithstanding the foregoing, and except as provided in the Contract or Addenda, the term "Confidential information," shall not be construed to include information that:

(1) Is or becomes readily available in public records or documents, other than as a result of an inappropriate disclosure by Vendor or other entity or persons acting on behalf of Vendor, or

(2) Can be documented to have been known by Vendor prior to its release to the Vendor by the State without an obligation of confidentiality, or

(3) Is disclosed pursuant to applicable Rhode Island law and/or federal law, judicial action or government regulations.

C. Vendor Acknowledgement

Vendor acknowledges that the Confidential Information is confidential and proprietary information and that its protection is essential to the security and mission of the State. It is understood that the Vendor is not granted an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information other than any licensing provisions as defined in a Contract and/or agreement between the State and Vendor.

D. Vendor's Agents

Vendor acknowledges and also shall require its employees, officers, independent contractors, and subcontractors, agents and any other entities acting on its behalf (collectively "Affiliates") to:

1. Copy, reproduce or use Confidential Information only for the purpose described in the Contract and not for any other purpose unless specifically authorized to do so in writing by the State; and

2. Not permit any other person or entity to use or disclose the Confidential Information for any purpose other than those expressly authorized by the Contract; and

3. Disclose such Confidential Information only to those of its Affiliates who require knowledge of the same for the purpose described in the Contract; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of the Contract; and

4. Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Affiliates a copy of the terms of the Contract and any other Non-Disclosure Agreement the State may provide for said Affiliates signature. Such restrictions will be at least as stringent as those applied by the Vendor's own most valuable confidential and proprietary information and as required by the Contract.

5. The acts or omissions of Vendor's Affiliates with respect to the Confidential Information shall be deemed to be acts or omissions of the Vendor.

E. Additional Requirements

1. Vendor will not remove, obscure or alter any confidentiality or trade secret notation from the Confidential Information without the State's prior written authorization.

2. Confidential Information will remain the exclusive property of the State unless as otherwise provided for in any agreement and/or the Contract between the State and Vendor; upon completion of the project and/or services, or whenever requested by the State, Vendor will promptly destroy or return to the State, in a form acceptable to the State, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the State in writing.

3. Vendor agrees that the breach of these terms would cause irreparable damage to the State. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the State harmless from actual damages from losses that result from its breach, including, but not limited to, reasonable attorneys' fees and related litigation expenses. Also, the State has the right to seek an order to restrain the Vendor and its agents, Affiliates, etc. from breaching these terms or otherwise commence any action in law or in equity.

13.18 Taxes

A. The State and its agencies are exempt from payment of any tax imposed directly on the purchaser of goods and services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, R.I. Gen. Laws § 31-36-1, *et seq*. Except for the Rhode Island Motor Fuel Tax, federal, state and local taxes should not be included in the Vendor's bid or proposal price or otherwise invoiced. Exemption Certificates will be furnished upon request. Vendors and their subcontractors performing improvements to real property pursuant to a contract with a State agency may purchase materials specifically allocated for the performance of said Contract from their suppliers provided that:

1. The materials are essential to the project;

2. The materials are incorporated into the project; and,

3. The Vendor or its subcontractors provide their suppliers with an exemption certificate.

13.19 Insurance/Bonds/Other Security

A. Insurance

Prior to issuance of a Contract, Vendor shall submit to the Division proof of insurance coverages as set forth in the General Condition Addendum A (General

Insurance Requirements), other applicable General Condition Addenda and/or as required by the solicitation ("Insurance Requirements"). Vendor shall comply with the minimum Insurance Requirements imposed by the State. If different or additional insurance requirements are set forth in the solicitation, then Vendor shall comply with the insurance requirements specified in the solicitation.

B. Payment and Performance Bonds

When required by the solicitation or the General Condition Addenda, the successful Vendor shall furnish a payment and/or performance bond in the amount stated in the solicitation from a surety licensed to conduct business in the State of Rhode Island upon the tentative selection.

C. Other Security

The State Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or other comparable forms of security, and/or to require additional or more extensive coverage for any individual procurement. Vendors shall provide certificates of insurance and required endorsements for all insurance requirements of the solicitation in form and terms acceptable to the State Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not "responsible." The State Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the State's interests.

13.20 Termination, Default, Cancellation and Stop Work

A. Non-Performance or Breach

A Contract may be rescinded, canceled or terminated by the State Purchasing Agent, at the Vendor's expense upon non-performance or breach by the Vendor of any of its obligations. Failure of a Vendor to cure such non-performance or breach within ten (10) business days after the receipt of notice, unless otherwise determined by the State Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing State contracts and or subcontracts to which the Vendor is a party, and/or the suspension or debarment of the Vendor from participating in future procurements. The State may pursue any and all of its rights and remedies at law or in equity against the defaulting Vendor or its surety.

B. Timeliness

Failure of a Vendor to deliver the required goods or perform services within the time specified and in accordance with the applicable standards of professional skill and care, or within reasonable time as interpreted by the State Purchasing Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the State Purchasing Agent, may cause

the State Purchasing Agent to purchase in the open market to replace those goods or services rejected or not delivered. The State Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any Contract when necessary. On all such purchases, the Vendor, and/or its surety, agrees to promptly reimburse the State for excess costs occasioned by the Vendor's default. Should the replacement cost be less, the Vendor shall have no claim for the difference. Vendor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service may be considered to be in default of Contract. The State Purchasing Agent may contract for completion of the work with another Vendor and seek reimbursement of all costs and expenses from the defaulting Vendor and/or its surety and pursue all rights and remedies at law or in equity.

C. Availability of Funds.

Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds by the General Assembly and/or the Federal Government. If any Contract is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds. If the term of extends into fiscal years subsequent, continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected goods not yet delivered, terminate any services supplied to the State, and relieve the State of any further obligation thereof. State shall remit payment for goods and services accepted prior to the date of termination in the notice.

D. Convenience

1. For subscription services the State may terminate for convenience.

2. For all other Contracts, the State Purchasing Agent shall have the right to terminate the Contract for convenience if the State Purchasing Agent determines in writing that termination is in the State's best interest. The Vendor shall be paid for work completed and accepted, but Vendor shall not be entitled to recover lost profits.

E. Stop Work

In the interests of health, safety and welfare, economic or otherwise, the State Purchasing Agent may issue a stop work order to a Vendor on any Contract for a reasonable period of time. The Vendor shall cease and desist any further work until so ordered by the State Purchasing Agent. In the event that the Vendor bears responsibility for the conditions requiring a stop work order, the State shall not be responsible for any delays.

13.21 Indemnification

A. General

Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys' fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor's breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, subcontractors or volunteers at any tier.

B. Intellectual Property

Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against all claims, demands, damages, liabilities, death, injury, judgments and other costs and expenses (including attorneys' fees), arising out of or related to, directly or indirectly, in whole or in part, a claim that a product or service or its use infringes the intellectual property rights of another person or entity.

13.22 Vendor Obligations

A. In addition to the specific requirements imposed by the State in the Contract, a Vendor engaged in providing goods or services to the State shall generally have the following standard responsibilities:

1. Perform services in accordance with applicable standards of professional skill and care or as otherwise provided in the solicitation or Contract. When applicable law requires that services be performed by licensed professionals, Vendor shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

2. To furnish adequate protection from damage for all work and to repair damage of any kind, for which it or its workmen are responsible, to the building or equipment, to its own work, or to the work of other Vendors.

3. To clear and remove all debris and rubbish resulting from its work from time to time, as directed or required, at completion of the work to leave the premises in a neat, unobstructed condition, broom clean, and in satisfactory order and repair.

4. To store equipment, supplies, and material at the project site only upon approval by the State, and at its own risk.

5. To perform all work so as to cause the least disruption and inconvenience to the State, and with proper consideration for the rights of other Vendors and workers.

6. To acquaint themselves with conditions to be found at the project site, and to assume responsibility for the appropriate dispatching of equipment and supervision of its employees during the conduct of the work.

7. To supervise Vendor employees and subcontractors and to ensure that its employees are instructed with respect to special rules, regulations, policies, and procedures in effect for any State facility or project site, and that its employees comply with such rules, regulations, policies and procedures.

8. To perform background checks of Vendor employees, subcontractors and agents as required by the State.

9. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and R.I. Gen. Laws Chapter 28-5.1. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

10. DRUG-FREE WORKPLACE REQUIREMENT – Vendors who do business with the State and their employees shall abide by the State's drug-free workplace policy. Specifically, Vendor agrees as follows:

    a. Vendor employees and agents are required to refrain from the abuse of alcohol and/or illegal and/or prescription drugs and must report to work in a fit condition to perform their duties or be subject to disciplinary action by the Vendor.

    b. All Vendor employees, while on State business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.

    c. Vendors will take appropriate disciplinary action with all violators of this policy who are currently employed. Vendors will not knowingly consider for employment anyone who is known to currently abuse alcohol and/or illegal and/or prescription drugs.

11. In the best interest of the State, the State Purchasing Agent reserves the right to remove or have a Vendor immediately remove any Vendor employee, subcontractor or agent of the Vendor working on a State Contract based on a good faith belief that the individual is not acting in an appropriate, professional and/or in a commercially reasonable manner.

12. To comply with the provisions of R.I. Gen. Laws § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

13.23 Force Majeure

Neither the State, nor its Vendors, shall be liable to the other for failure or delay in performance due to a cause not reasonably foreseen by, beyond the control of, and without the fault or negligence of the party declaring a force majeure event; provided that the party declaring a force majeure event shall have used its best efforts to avoid such failure or delay in performance, minimized the impact thereof, and given prompt written notice to the other party when first discovered, fully describing its probable effect and duration. In such event of excusable delay or non-performance, the State shall have the right at its option and without liability to cancel by notice to the Vendor any and all portions of Vendor's performance so affected and to take such other action as may be necessary. The State may, after ascertaining the facts and the extent of the delay, extend the time for completing performance when the facts so justify and amend the timetable accordingly. The State shall not be liable for any increased costs, including price escalation, beyond the performance or delivery date, due to a force majeure event. Force majeure shall not include a Vendor's financial distress or the financial distress of Vendor's parent, subsidiary, affiliated or associated company; claims or court orders that restrict Vendor's ability to deliver the goods, products or services contemplated by the Contract; strikes; labor unrest; supply chain disruptions; Vendor's subcontractor's or supplier's financial distress, conduct, negligence or default; or, as otherwise set forth within the Contract and associated documents.

13.24 Compliance with Law

During the term of the Contract with the State, Vendors shall comply with all statutes, laws, regulations, codes, orders, policies, rules and regulations of federal, state or municipal authorities applicable to the furnishing of such goods or services as set forth in the solicitation and the Vendor's bid or proposal all of which are hereby incorporated by reference into any Purchase Order or Purchase Agreement issued by the Division. Vendors shall pay for all required permits, licenses and fees required for the delivery of goods or services to the State unless otherwise stated in the solicitation or Contract.

13.25 Subcontracting, Assignment, Merger or Acquisition, Key Personnel, Third-Party Payment, and Prompt Payment of Subcontractors

A. Subcontracting

Vendors shall not subcontract with any third-party, except as set forth in its bid or proposal, without the prior written consent of the State Purchasing Agent. Such consent, if granted, shall not relieve the Vendor of any of its responsibilities under the Contract, nor shall it create privity of contract between the State and the sub-contractor. If a Vendor uses a sub-contractor to fulfill its responsibilities, then the Vendor shall be responsible for the sub-contractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Provided, however, for Rhode Island Department of Transportation ("RIDOT") road, bridge and heavy construction projects, approval of subcontractors shall be in accordance with "Bluebook" specifications issued by RIDOT. Upon request, contractors must submit to the Division of Purchases a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

B. Assignment

Vendors shall not, in whole or part, assign, transfer, convey, sublet, delegate or otherwise dispose of a Purchase Order, Purchase Agreement or Contract with the State or its right, title or interest therein, or its power to execute such Contract prior to issuance of a Purchase Order, to any other person, company, corporation, or entity without the written consent of the State Purchasing Agent. If consent is not granted, then the assignment, transfer, conveyance, sublet, delegation, or disposal shall be void ab initio.

C. Merger or Acquisition

If subsequent to the submission of a bid or proposal and prior to issuance of a Purchase Order or Purchase Agreement, a Vendor merges with or is acquired by another entity, then the Vendor shall provide appropriate and legally binding documentation between the Vendor and the successor entity ratifying acceptance of the Vendor's bid, proposal and any Contract terms, conditions, and pricing submitted to the Division. The State Purchasing Agent may disqualify the Vendor if the successor entity is determined to be not responsible.

D. If, after issuance of a Purchase Order, there is a material acquisition or change of ownership of a Vendor or its parent to another entity or person, the State Purchasing Agent may either authorize assignment of the Purchase Order or Purchase Agreement to the successor entity or cancel the Purchase Order or Purchase Agreement.

E. Key Personnel

If the Vendor's bid or proposal identified key personnel who would be responsible for fulfillment of the Vendor's performance obligations and said key personnel are for any reason no longer available, then the State Purchasing Agent may either authorize substitution of said key personnel by the Vendor or cancel the Contract.

F. Third-Party Payment

Unless expressly provided for in the solicitation, the State will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the State Purchasing Agent. If a Vendor's bid or proposal is contingent upon such payment(s), then it must be clearly stated within the bid or proposal and is subject to approval by the State Purchasing Agent.

G. Prompt Payment of Subcontractors

In accordance with R.I. Gen. Laws § 42-11.1-3(b) Vendors shall make prompt payment for satisfactory subcontract work for which the State has made partial or full payment. The State reserves the right to determine whether a Vendor, who repeatedly fails to make prompt payment to subcontractors, is Responsible relative to future procurements, and may suspend, debar or otherwise remove such Vendors from the State Bidders List.

13.26 Advertising

Vendors shall not reference a State Contract for the purposes of advertising or promotion without written authorization from the State Purchasing Agent and any agency owner of the referenced Contract.

13.27 Non-Exclusive Rights

The State reserves the right to issue multiple solicitations for goods or services similar or identical to the goods or services described in a solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

13.28 Election of Remedies

All rights exercisable by and remedies of the State shall be cumulative. The exercise or beginning of the exercise by the State of any of its rights and remedies will not preclude the State from exercising any other right hereunder or otherwise granted by law or in equity.

13.29 Survival

All Vendor obligations herein shall survive expiration, termination and/or cancellation of the Contract.

13.30 Contract Transition

Vendor agrees to act in good faith and a commercially reasonable manner at all times in the transition of a Contract to a new Vendor.

13.31 Governing Law, Forum

A. The construction and effect of any solicitation, Contract or Purchase Order documents, Purchase Agreement or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq*. shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise.

B. After exhaustion of any administrative remedies, any suit, action or proceeding brought by a Vendor in connection with any solicitation, Contract, or Purchase Order or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq*. shall be brought solely in the Providence Superior Court, Providence, Rhode Island. Vendors irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.

13.32 Effective Date and Commencement of Work

A. Effective Date of the General Conditions

The General Conditions shall apply to all procurements issued after the effective date of these regulations.

B. Contract Effective Date

The effective date of any procurement shall be the date contained in the Contract. No work or services shall commence prior to the issuance of a Purchase Order or written authority to proceed formally issued by the Division. Any work performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the State.

13.33 Amendments to General Conditions

The State Purchasing Agent reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the State and/or protect the health, safety or welfare, economic or otherwise, of the State and its citizens.

13.34 Contract Addendums in Addition to the General Conditions of Purchase

A. In addition to the General Conditions of Purchase, the additional contract Addenda ("GC Addenda") listed below shall apply to specific types/categories of Contracts with the State at the direction of the Division. The Division shall indicate any applicable GC Addenda in the solicitation or other procurement. These GC Addenda shall be considered as additional Contract terms and conditions with the State.

B. The GC Addenda may be amended from time to time without Administrative Procedures Act promulgation and at the discretion of the Division. The GC Addenda shall be considered contract terms and not regulations.

C. The Division may post the current GC Addenda on the Division's website for reference purposes and/or may include with the solicitation. The GC Addenda includes the following:

1. GC Addendum A – General Insurance Requirements
2. GC Addendum B – Information Technology Requirements
3. GC Addendum C – Public Works Project Requirements (AIA Agreements)
4. GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners.
5. GC Addendum E – Standard Business Associates Agreement Requirements
6. GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above.

D. The Division reserves the right to add GC Addenda as necessary without further promulgation of regulation. Again, any additional GC Addenda would be considered a Contract term.

E. In lieu or in addition to any GC Addenda, the Division reserves the right to include any contract terms in a specific solicitation or procurement as necessary.

13.35 Severability

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

220-RICR-30-00-13

TITLE 220 - DEPARTMENT OF ADMINISTRATION

CHAPTER 30 - PURCHASES

SUBCHAPTER 00 - N/A

PART 13 - GENERAL CONDITIONS OF PURCHASE (220-RICR-30-00-13)

Type of Filing: Adoption

Agency Signature

E-SIGNED by Michael DiBiase	December 11, 2018
Agency Head Signature	Agency Signing Date

Department of State

01/01/2019	
Regulation Effective Date	

K.C.	December 12, 2018
Department of State Initials	Department of State Date

Attachment F
PROTEST INFORMATION

This attachment is intended to provide Offerors with an overview of the Lead State's protest law, procedures, and requirements, which may be updated and amended without notice. Offerors filing a protest are wholly responsible for locating, understanding, and complying with protest law, procedures, and requirements in effect at the time of the protest.

§ 2.2-4360. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

   Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (§ 2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

Attachment G
OFFEROR INFORMATION, ACKNOWLEDGEMENTS, AND CERTIFICATIONS

Offeror must provide complete responses to each item below. **Insert your responses into this worksheet directly below each question or prompt.**

I. OFFEROR INFORMATION

A. Company's Full Legal Name:
B. Primary Business Address:
C. Federal Tax Identification Number:
D. Entity Type:

- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Limited Liability Company
- ☐ Corporation

II. BUSINESS DETAILS

A. Company Website. Provide a URL for your company's website.

B. Company History. Provide a brief history of your company, including the year of its founding and any material acquisitions or mergers in which it has been involved.

C. Company Size. Identify the number of employees working for your company.

D. Ownership Structure. Describe your company's ownership structure.

E. Litigation. List all claims of non-performance or breach from customers in excess of $5,000, including all pending litigation matters (including civil, criminal, or appellate) or criminal convictions in the past 5 years for the company and all principals. Attach an additional document if necessary.

III. PROPOSAL CONTACT

The Proposal Contact must be able to respond timely to communications from the Lead State. Offeror must, within 24 hours, notify the Lead State of any change to Offeror's Proposal Contact.

A. Proposal Contact Name:
B. Proposal Contact Title:
C. Proposal Contact Email:
D. Proposal Contact Phone Number:

IV. ACKNOWLEDGEMENTS AND CERTIFICATIONS

By signing below and submitting a response to this RFP, Offeror acknowledges and certifies the following:

A. Debarment. (Check one of the below.)

☐ Neither Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. Furthermore, Offeror was neither created nor used for the purpose of circumventing a debarment decision against another vendor. Offeror understands this if it is created or used for the purpose of circumventing a debarment against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

B. Non-collusion.

1. This proposal has been developed independently by Offeror and has been submitted without collusion and without any agreement, understanding, or planned common course of action with any other Offeror or supplier of Deliverables in a manner designed to limit fair and open competition.
2. The contents of this proposal have not been communicated by Offeror or its employees or agents to any person not an employee or agent of Offeror and will not be communicated to any such persons prior to the RFP Close Date.

C. Data Disclosure to Foreign Governments and Prohibited Technology. (Check one of the below.)

☐ Offeror is not an entity subject to laws, rules, or policies potentially requiring disclosure of, or provision of access to, customer data to foreign governments or entities controlled by foreign governments, and Offeror's offerings do not contain, include, or utilize components or services supplied by any entity subject to the same. Offeror's offerings also do not contain, include, or utilize covered technology prohibited under Section 889 of the National Defense Authorization Act, as amended.

☐ Offeror cannot certify all statements above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

D. Conflicts of Interest. (Check one of the below.)

☐ Offeror represents that none of its officers or employees are officers or employees of the Lead State and that none of its officers or employees have a conflict of interest as defined by the laws, rules, or policies of the Lead State.

☐ Offeror cannot certify the statement above, and Offeror will affix a written explanation to this attachment for review by the Lead State. If after reviewing Offeror's written explanation the Lead State determines it is not in the best interest of the Lead State, Participating Entities, or

Purchasing Entities to award Offeror a Master Agreement, the Lead State may reject Offeror's proposal.

E. **Business Certifications.** (Check all that apply.)

☐ Offeror is a certified [demographic]-owned business, as defined in [statutory citation].

☐ Offeror is a resident business, as defined in [statutory citation].

F. **Required Insurance.** Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the levels prescribed in Attachment D Sample Master Agreement. Offeror understands that this requirement is mandatory and will not be negotiated by the Lead State.

G. **NASPO ValuePoint Administrative Fee.** Offeror agrees to pay a [0.25%] administrative fee and submit summary and detailed sales reports to NASPO ValuePoint in accordance with Attachment D, Sample Master Agreement. All costs proposed by Offeror must be inclusive of the NASPO ValuePoint administrative fee. Offeror understands that the requirements in this section are mandatory and will not be negotiated by the Lead State.

H. **Marketing Plan.** If awarded a Master Agreement resulting from this RFP, within 30 days of execution of the Master Agreement, Offeror will meet with NASPO ValuePoint marketing personnel to review and track progress on the marketing plan described by Offeror in Attachment H, Offeror Response Worksheet.

I. **Confidential, Proprietary, or Protected Information.** As set forth in Attachment A, RFP Terms and Conditions, if Offeror is claiming any portion of its proposal as confidential, proprietary, or protected, Offeror must complete the required sections of Attachment K, Claim of Business Confidentiality, and submit with Offeror's proposal a redacted copy of Offeror's proposal, which must be clearly marked as such. Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected. Submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. If Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

J. **Conditional Awards.** Offeror understands that awards and execution of a Master Agreement are conditional as set forth in Attachment A, RFP Terms and Conditions, and Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.

K. **Understanding of the RFP.** Offeror has read the RFP in its entirety and understands and agrees to comply with all requirements set forth therein. Any conflicts in the materials composing the RFP and any issues relating to the content of the RFP, including instructions, requirements, or specifications Offeror believes to be ambiguous, unduly restrictive, erroneous, anticompetitive, or unlawful, have been brought to the attention of the Lead State using the process described in the RFP for asking questions or, if applicable, by filing a protest. In accordance with Attachment A, RFP Terms and Conditions, Offeror acknowledges and understands that any protest, claim, dispute, or action based upon a conflict or issue described herein must be filed no later than the RFP Close Date, and Offeror waives the right to file any protest, claim, dispute, or action based upon a conflict or issue described herein if not filed by the RFP Close Date.

Signature

The undersigned is one of the following:

1. The Offeror, if Offeror is an individual;
2. A partner in the company, if Offeror is a partnership; or
3. An officer or employee of the responding corporation having authority to sign on its behalf, if Offeror is a corporation.

By signing below, the undersigned warrants that the representations made and the information provided in Offeror's proposal are true, correct, and reliable for purposes of evaluation for a potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from contract award and may subject the undersigned, Offeror, or both to suspension or debarment proceedings, as well as other remedies available to the Lead State by law, including termination of any Master Agreement awarded to Offeror.

OFFEROR:

Signature	**Date**
Printed Name	**Title**
Email Address	**Phone Number**

Attachment J
PROPOSED MODIFICATIONS TO SAMPLE MASTER AGREEMENT

The Lead State may, but is not obligated to, consider proposed modifications to Attachment D, Sample Master Agreement.

Provisions of the Sample Master Agreement that are generally inapplicable to, incompatible with, or unsuitable for the subject of this RFP should be brought to the attention of the Lead State using the process described in this RFP for asking questions and will be addressed only at the sole discretion of the Lead State.

Offeror-specific modifications to the Sample Master Agreement may be proposed as part of Offeror's proposal in this attachment but are **strongly discouraged**. The quantity, breadth, and nature of modifications proposed by Offeror may be considered in the Lead State's evaluation of Offeror's proposal and of its risks, costs, and benefits to the Lead State and potential Participating Entities and Purchasing Entities. Proposing excessive or overly restrictive modifications, or proposing modifications upon which Offeror's proposal is conditioned, may result in Offeror's proposal being deemed non-responsive.

Offeror's Proposed Modifications. (Check one of the below.)

☐ Offeror has no proposed modifications to Attachment D, Sample Master Agreement.

☐ Offeror proposes the modifications set forth in the table below and **will submit with Offeror's proposal a redlined copy of Attachment D, Sample Master Agreement** incorporating each proposed modification. Offeror understands, acknowledges, and agrees to comply with the following:

- The Lead State will not consider any proposed modification that:
  - Is not submitted in this attachment;
  - Is not accompanied by an explanation as required in this attachment;
  - Is not reflected in redlined edits to the Sample Master Agreement and submitted with Offeror's proposal;
  - Merely references another document or a URL; or
  - Modifies the NASPO ValuePoint administrative fee.
- Offerors may propose additional terms but must include them in this attachment and must clearly identify where any terms conflict with the Sample Master Agreement.
- If Offeror is awarded a Master Agreement resulting from this RFP, a comparison of Attachment D, Sample Master Agreement and Offeror's accepted modifications thereto may be posted on the NASPO ValuePoint website for examination by potential Participating Entities and Purchasing Entities.
- Each of the following fields **must** be completed for each proposed modification to the Sample Master Agreement:
  - **Sample Master Agreement Section Reference:** The page, section, or paragraph in the Sample Master Agreement that is the subject of Offeror's proposed modification.
  - **Sample Master Agreement Language:** The language in the Sample Master Agreement that the Offeror is proposing to modify.
  - **Proposed Changes and Alternate Language:** The Offeror's proposed changes to the Sample Master Agreement language including, if applicable, Offeror's proposed alternate language.
  - **Justification for Proposed Change:** Offeror's justification for the proposed change.

- **Risk and Benefits of Acceptance:** Offeror's analysis of the risk and benefits to the Lead State, Participating Entities, or Purchasing Entities—including quantifiable costs or cost savings—if Offeror's proposed change is accepted by the Lead State.

Sample Master Agreement Section Reference	Sample Master Agreement Language	Proposed Changes and Alternate Language	Justification for Proposed Change	Risk and Benefits of Acceptance

[Add additional rows as needed.]

Attachment K
CLAIM OF BUSINESS CONFIDENTIALITY

Offeror's Claims of Business Confidentiality. (Check one of the below.)

☐ Offeror is not claiming any information within Offeror's proposal as confidential, proprietary, or protected. (Check box and skip to **Signature** section below.)

☐ Offeror claims the information set forth in the table below as confidential, proprietary, or protected and **will submit with Offeror's proposal a redacted copy of Offeror's proposal**, which must be clearly marked as such. Offeror understands, acknowledges, and agrees to comply with the following:

- Each of the following fields **must** be completed for each claim asserted by Offeror:
  - **Proposal Section Reference:** The page, section, or paragraph in Offeror's proposal containing the information claimed to be confidential, proprietary, or protected.
  - **Confidential Information:** A description of the information claimed to be confidential, proprietary, or protected.
  - **Basis for Claim:** The basis for Offeror's claim, which in accordance with the Code of Virginia , § 2.2-4342F:
    Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder or offeror must invoke the protections of the Code of Virginia, § 2.2-4342F, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid or proposal will be rejected.

    Offeror may not mark pricing or Offeror's entire proposal as confidential, proprietary, or protected.

Proposal Section Reference	Confidential Information	Basis for Claim	Explanation

[Add additional rows as needed.]

Signature

By signing below, the undersigned certifies under penalty of perjury that the representations made and the information provided herein are true and correct and may be relied upon by the Lead State for purposes of determining the validity of Offeror's claim(s). Offeror understands that submission of a Claim of Business Confidentiality does not guarantee that information claimed by Offeror as confidential, proprietary, or protected will not be subject to disclosure in accordance with applicable public information laws, rules, and policies. Offeror further agrees that if Offeror fails to submit a redacted copy of Offeror's proposal, or fails to claim information as confidential, proprietary, or protected in compliance with this RFP, Offeror releases the Lead State, NASPO, NASPO members, and entities represented on the Multistate Sourcing Team from any obligation to keep the information confidential and waives all claims of liability arising from disclosure of the information.

OFFEROR:

_____	_____
Signature	**Date**
_____	_____
Printed Name	**Title**
_____	_____
Email Address	**Phone Number**

ATTACHMENT L

COMMMONWEALTH OF VIRGINIA
GENERAL TERMS AND CONDITIONS

The following terms and conditions are MANDATORY and shall be included verbatim in any Contract awarded by the Commonwealth.

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

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual.* The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA).* If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

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

1. During the performance of this contract, the contractor agrees as follows:

   a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over $10,000: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

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

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

G. **PAYMENT:**

1. To Prime Contractor:

a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.

d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e. **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia,* § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the

Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia,* § 2.2-4351.,. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia,* § 2.2-4363).

2. To Subcontractors:

   a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:

      (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

      (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

   b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

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

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

H. **QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

I. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

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

J. **USE OF BRAND NAMES:** Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information

furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equivalent product, such proposal will be considered to offer the brand name product referenced in the solicitation.

K. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA (eva.virginia.gov) for a minimum of 10 days

L. **DRUG-FREE WORKPLACE:** Applicable for all contracts over $10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

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

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

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

a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:

(i) DSBSD-certified Small Businesses: 1%, capped at $500 per order.
(ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.

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

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

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

O. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

P. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

Q. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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

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

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

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

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

ATTACHMENT M
COMMONWEALTH OF VIRGINIA
SPECIAL TERMS AND CONDITIONS

The following terms and conditions may be included in any Participating Addendum between the Commonwealth of Virginia and a Contractor for any resulting contract. Other Participating Entities may have their own provisions.

1. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

2. **eVA ORDERS AND CONTRACTS:** The solicitation/contract will result in multiple purchase order(s) with the applicable eVA transaction fee assessed for each order.

   Contractors providing goods and/or services to the Commonwealth shall participate in the eVA e-procurement solution and agree to comply with the following: if this solicitation is for a term contract, failure to provide a static/hosted catalog (excel file) or an electronic catalog with functionality to interface with eVA (punchout catalog) for items awarded, will be just cause for the Commonwealth to reject your response or terminate the contract for default. The format of the electronic catalog shall conform to the eVA Catalog standards. Contractors shall work with the Contract Officer and eVA Catalog Team to provide the appropriate catalog option for the contract.

3. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract are always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract. Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body, and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the contractor.

4. **MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC):**

   Purchasing charge cards offer Commonwealth of Virginia agencies and public entities the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services. Offerors responding to this solicitation should note that acceptance of payment by purchase card is **mandatory unless waived by DPS within 90 calendar days of contract award.**

   Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) resulting from this solicitation must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below and vendors must establish their card account at Level 2, which is mandatory, or Level 3, which is optional. Information on the various levels for the Purchase Card is indicated below.

   Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed

below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

Level 2 - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs. Level 2 is **mandatory** for any vendors who do business with the Commonwealth of Virginia and accept the Purchasing Card.

- Customer Code (PCO Number from eVA); and
- Vendor Tax ID

Level 3 - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 **optional** data which is considered "Superior Data", the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

5. **ORDERS:** Authorized Users must order goods and/or services available from the Contract by issuing an eVA purchase order through the Commonwealth's electronic procurement website portal http://www.eva.virginia.gov.

6. **PERIOD FOR PERFORMANCE OF PURCHASE ORDERS:** To be valid, a purchase order issued under this Contract must be issued during the term of the Contract. The period specified for performance of the purchase order may extend past the term of the Contract. If a notice terminating this Contract is issued, the notice shall be construed as applying only to the Contract and not to any existing purchase order, unless the notice expressly states the intent to terminate the purchase order.

7. **LOBBYING AND INTEGRITY:** Offerors are cautioned that communications with individuals other that the DPS Contracting Officer may result in incorrect and/or insufficient information being provided. In addition, the Offeror shall not, in connection with this or any other agreement with the Commonwealth of Virginia, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any state officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state officer or employee.

   Upon request of the Commonwealth of Virginia's, Department of General Services, the Offeror shall provide any type of information deemed relevant to the Offeror's integrity or responsibility to provide the services or goods, described herein.

8. **EXCLUSIVITY OF TERMS AND CONDITIONS:** No employee or agent of the Commonwealth or Authorized User shall be required to sign or execute any additional contract, license or other agreement containing contractual terms and conditions. No contractor shall be required to sign, from any employee or agent of the Commonwealth or Authorized Users, any additional agreements, contracts, or other documents that were not part of the original contract. Any documents signed by persons other than the Director of DPS or their authorized designee shall have no validity or effect upon the Contract.

9. **PRICE ESCALATION/DE-ESCALATION:** The Commonwealth recognizes that current price list contracts are subject to adjustments at different times during the year; therefore, there will be no pre-determined price adjustment time period for the contract.

The percentage discount may be increased but shall not be decreased throughout the term of the contract, to include all renewals, and shall apply to any new equipment, which may be introduced and added to the manufacturer's product line. Public bodies will apply the discount to the current price list contract that has been incorporated as part of the Contract by the Purchasing Officer, at the time the order is placed. However, should the price decrease between receipt of the order, and shipment of the order, the Contractor shall invoice at the new lowest discounted price. Price increases after placement of order will not be accepted.

Contractor shall give not less than 30 days advance notice of any price increases to the Contracting Officer. Price adjustments should not exceed by more than the Commercial Turf and Grounds Care Equipment Manufacturing category of the Producer Price Index of the United States Bureau of Labor Statistics. Any approved price changes will be effective only when approved by the Contract Officer at the beginning of the calendar month following the end of the full 30-day notification period or approval date. The Contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the Contractor's request for increase, which will verify that the requested price increase is general in scope and not applicable just to NASPO ValuePoint Master agreements.

The Contracting Officer will notify Contractor in writing of the effective date of any increase, which it approves. However, the Contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The Contractor is further advised that decreases, which affect the cost of materials, be required to be communicated immediately to the Contracting Officer.

Note: Consumers Price Indices, Producers Price Indices or other appropriate indices will be used as a guide to determine price increases or decreases. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth.

10. **CONTRACTUAL DISPUTES:** In accordance with Code of Virginia § 2.2-4363, contractual claims, whether for money or other relief, shall be submitted in writing to the Authorized User no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to the Authorized User at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Authorized User shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

a. The Contractor may not invoke any available administrative procedure under Code of Virginia § 2.2-4365 nor institute legal action prior to receipt of the Commonwealth's decision on the claim, unless the Commonwealth fails to render its decision within thirty (30) days. The decision of the Commonwealth shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code of Virginia § 2.2-4364 or the administrative procedure authorized by Code of Virginia § 2.2-4365.

b. The Commonwealth or any Authorized User, and their officers, agents and employees, including without limitation, the contracting and Ordering Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency or Authorized User that is purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.

c. In the event of any breach by the Commonwealth or any Authorized User, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor' remedies include the right to terminate any services hereunder.

11. **REPORTING REQUIREMENTS AND SURCHARGE ADJUSTMENT (SCA) FEE:**

Contractor quarterly report of sales: Contractor shall provide electronic reports in Microsoft Excel format on a quarterly basis showing total invoiced sales data, which means all invoices issued within the reporting period. Reports shall be provided no later than the 15th of the next month following the end of the calendar

quarter. Reporting total invoiced contract sales and return transactions that took place in the immediately preceding quarter. Reports shall be sent to the contract officer and to the following email address: vssireport@dgs.virginia.gov. Failure to submit information in the required format may result in cancellation of the awarded contract.

a. SURCHARGE ADJUSTMENT FEE:

Contractor shall pay the Department of General Services (DGS), a Surcharge Adjustment (SCA) fee under this Contract. **DGS will not issue invoices or statements.** The Contractor must remit the SCA fee by the last day of the month following the end of the calendar quarter. The SCA fee equals two percent (2%) of the quarterly reported total invoiced sales. The SCA fee amount due must be paid by check with identification of "Contract Number," "Report Amounts," and "Report Period" on either the check stub or other remittance material. DGS may, at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DGS that validates the agreement, then the payment shall be made by check as described herein.

Checks shall be payable to: Treasurer, Commonwealth of Virginia.

Checks shall be mailed to:
DGS/Division of Purchases and Supply
ATTN: VSSI Coordinator
PO Box 1199
Richmond, VA 23218-1199

If the full amount of the SCA fee is not paid within 30 calendar days of due date, it shall constitute a debt that the Contractor is obligated contractually to pay to the Commonwealth of Virginia, and the Commonwealth may exercise all rights and remedies available under law. Reports shall be sent to the DPS Contracting Officer at tracy.wrenn@dgs.virginia.gov and to the following email address: vssireport@dgs.virginia.gov. Failure to submit sales reports, falsification of sales reports, and or failure to pay the SCA fee in a timely manner may result in cancellation of the Contract.

b. REPORTING AND PAYMENT SCHEDULES:

SCA Fee Period	Sales Months	Payment Due
1st Quarter	Jan, Feb, Mar	April 30th
2nd Quarter	Apr, May, June	July 31st
3rd Quarter	July, Aug, Sept	October 31st
4th Quarter	Oct, Nov, Dec	January 31st

Contractor shall:

1. Meet or conference call at least quarterly with the DPS Contracting Officer to review performance, usage under the Contract, and discuss opportunities for improvements.
2. Provide any documentation or reports as requested by the DPS Contracting Officer.
3. Notify the DPS Contracting Officer, in writing, of any unresolved disputes or problems that have been outstanding for more than thirty (30) days.

12. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid the identification number issued to it by the State Corporation Commission (SCC). Any bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise

required by law is required to include in its bid a statement describing why the bidder is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance. Complete ATTACHMENT

13. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING :**

1. Submission of Small Business Subcontracting Plan: It is the statewide goal of the Commonwealth that 42% of its purchases be made from small businesses certified by DSBSD. This includes discretionary spending in prime contracts and subcontracts. All bidders are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status when they have also received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the bidder shall note such on the Small Business Subcontracting Plan. No bidder or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids.
2. Evidence of Compliance with Small Business Subcontracting Plan**:** Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution monthly reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

3. Prime Contractor Subcontractor Reporting:

(a) Each prime contractor who wins an award greater than $100,000, shall deliver to the contracting agency or institution on a monthly basis, all applicable information for each subcontractor listed on the Small Business Subcontracting Plan that are DSBSD-certified businesses or Employment Services Organizations (ESOs). The contractor shall furnish the applicable information to the purchasing office via the Subcontractor Payment Reportingtool accessible within the contractor's eVA account.

(b) In addition, each prime contractor who wins an award greater than $200,000 shall deliver to the contracting agency or institution on a monthly basis, all applicable information on use of subcontractors that are **not** DSBSD-certified businesses or Employment Services Organizations. The contractor shall furnish all applicable information to the purchasing office via the Subcontractor Payment Reporting tool accessible within the contractor's eVA account

14. **DELIVERY/SERVICE TO CORRECTIONAL INSTITUTIONS:**

The Contractor shall be responsible for adherence to the following guidelines as they pertain to delivering goods and/or providing serves to correctional institutions, especially if the location is within the secured perimeter:

a. The Contractor shall be responsible for ensuring that all personnel connected with the work comply with the rules and regulations of each ordering institution, which may reach beyond the scope of this specification.

b. The Contractor shall maintain proper security and control over all personnel, equipment, tools, and materials at all times. The Contractor's equipment and personnel shall be subject to security checks and associated delays therefrom.

c. There shall be no verbal discussion or physical contact between the Contractor's employees and offenders.

d. Anyone bringing any offender any item, such as (but not limited to) weapons, tools, food, drink, clothing, cigarettes, matches, correspondence, printed or electronic media, or assisting offenders to escape is in violation of Commonwealth law and may be prosecuted to the fullest extent of the law.

e. No weapons, alcohol, drugs, or medication of any type will be allowed on Commonwealth property.

f. Keys shall be removed from all vehicles and other mobile equipment when not in operation. Vehicle doors and tool compartments shall be locked at all times when not in use. Ladders left on vehicles shall be chained and locked at all times.

g. Any tools, especially cutting tools, if left unattended, will be confiscated.

h. All security regulations shall be observed at all times. These will be made known to the Contractor and his representatives by the Institutional Security Chief, or his designee, at the point of entrance to the institution.

i. All persons entering the prison complex are subject to search.

j. Contractors and their representatives are limited to movement to and from, and within, the immediate area of their work.

k. An institutional employee may be designated as a liaison between the Contractor and institution. Unless otherwise stated this person will be the Department Superintendent for whom the Contractor is performing the service or delivering the goods.

l. Vehicles may not be permitted to leave the facility until after the daily or routine security check has been performed.

m. All Contractor employees shall have valid identification with photograph at all times for identification. Validity of identification is determined solely at the discretion of the institution. A valid government-issued driver's license is generally acceptable. No persons will be permitted to enter the institution without valid identification.

n. The institution reserves the right to refuse entrance to anyone who appears, in the institution's sole judgment, to be under the influence of drugs or alcohol, or otherwise impaired.

SMALL BUSINESS SUBCONTRACTING PLAN

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential Offerors are required to include this document with their proposal response.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids. This shall also include DSBSD-certified women- owned and minority-owned businesses and businesses with DSBSD service disabled veteran owned status when they also hold a DSBSD certification as a small business on the bid due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.SBSD.virginia.gov (Customer Service).

Offeror Name: _____

Preparer Name: _____ **Date:** _____

Who will be doing the work: □ I plan to use subcontractors □ I plan to complete all work

Instructions

A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.

B. If you are not a DSBSD-certified small business, complete Section B of this form the Offeror shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period the initial contract period in Section B.

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number:_____ Certification Date:_____

Section B

If the "I plan to use subcontractors box is checked," populate the requested information below, per subcontractor to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement

Subcontract #1

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or $ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #2

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or $ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #3

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or $ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #4

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or $ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #5

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or $ (Initial Term): _____ Contact Address: _____

Description of Work: _____

STATE CORPORATION COMMISSION FORM

Offerors are required to return this form with their proposal.

Virginia State Corporation Commission ("SCC") registration information: **The Offeror:**

☐ is a corporation or other business entity with the following SCC identification number:

_____

-OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location)

-OR-

☐ is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE** >>** Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

Signature: _____ Date: _____

Name: _____
Print

Title: _____

Name of Firm: _____

VENDOR DATA SHEET

The following information is required as part of the Offeror's response to this solicitation.

1. Qualification: The Offeror must have the capability and capacity in all respects to satisfy fully all of the contractual requirements.

2. Offeror's Primary Contact:

   Name: _____ Phone: _____ Email: _____

3. Years in Business: Indicate the length of time Offeror has been in business providing this type of good or service:

   _____ Years _____ Months

4. eVA Supplier ID or DUNS Number: _____

5. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that the Offeror is servicing, has serviced, or has provided similar goods/services. Include the length of service and the name, address, and telephone number of the point of contact.

   A. Company:_____ Contact: _____
   Phone:(_____)_____ Email: (_____)_____
   Dates of Service: _____$ Value: _____

   B. Company_____ Contact: _____
   Phone:(_____)_____ Email: (_____)_____
   Dates of Service: _____$ Value: _____

   C. Company:_____ Contact: _____
   Phone:(_____)_____ Email: (_____)_____
   Dates of Service: _____$ Value: _____

   D. Company:_____ Contact: _____
   Phone:(_____)_____ Email: (_____)_____
   Dates of Service: _____$ Value: _____

I certify the accuracy of this information.

Signed: _____ Title: _____ Date: _____