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|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p align="center"><b>State of South Carolina</b></p> <p align="center">Request for Proposal</p> | <p>Solicitation: <b>5400027173</b><br/> Date Issued: 09/03/2024<br/> Procurement Officer: MICHAEL SPEAKMON, CPPO<br/> Phone: 803-737-9816<br/> E-Mail Address: <a href="mailto:mspeakmon@mmo.sc.gov">mspeakmon@mmo.sc.gov</a><br/> Mailing Address: SFAA, Div. of Procurement Services<br/> 1201 Main Street, Suite 601<br/> Columbia SC 29201</p> |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

DESCRIPTION: **STC for Products & Supplies for Correctional Facilities & Incarcerated Individuals**

USING GOVERNMENTAL UNIT: **Statewide Term Contract**

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **10/21/2024 11:00 AM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **09/18/2024 12:00 PM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **ONE (1) Electronic Media Copies of Technical & Price Proposals, One (1) Redacted Copy** via electronic media (marked "redacted"), (See "Ownership and Disclosure of Proposals" & "Disclosure of Your Bid/Proposal and Submitting Confidential Information" [See **"Online Bidding Instructions" in Attachment A**]

**Initial here if NO redacted copy is necessary \_\_\_\_\_**

CONFERENCE TYPE: **Pre-Proposal**  
DATE & TIME: **09/16/2024 2:00 PM**

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

LOCATION: **This meeting will be via Microsoft Teams only. Refer to Important Dates, in the "RFP Overview" document for instructions to attend the meeting.**

AWARD &  
AMENDMENTS

Award will be posted on **12/09/2024**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred eighty (180) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR

(full legal name of business submitting the offer)

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

AUTHORIZED SIGNATURE

(Person must be authorized to submit binding offer to contract on behalf of Offeror.)

DATE SIGNED

TITLE

(business title of person signing above)

STATE VENDOR NO.

(Register to Obtain S.C. Vendor No. at [www.procurement.sc.gov](http://www.procurement.sc.gov))

PRINTED NAME

(printed name of person signing above)

STATE OF INCORPORATION

(If you are a corporation, identify the state of incorporation.)

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)

☐ Sole Proprietorship ☐ Partnership ☐ Other \_\_\_\_\_

☐ Corporate entity (not tax-exempt) ☐ Corporation (tax-exempt) ☐ Government entity (federal, state, or local)



**REQUEST FOR PROPOSALS**  
**for**  
**Products and Supplies for Correctional**  
**Facilities and Incarcerated Individuals.**

**Issued by**  
**the STATE OF SOUTH CAROLINA**



**In collaboration with**





## **SOLICITATION NUMBER 5400027173**

### **RFP**

### **RFP OVERVIEW**

#### **I. INTRODUCTION**

This Request for Proposals (RFP) is being issued by the State of South Carolina ("Lead State") in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements for **Products and Supplies for Correctional Facilities and Incarcerated Individuals**.

Note: The use of the terms corrections facilities, inmate and incarcerated are synonymous with the terms institutional facility, patient and institutionalized.

The purpose of this competitive solicitation is to develop a "catalog category discount" contract to provide for equipment and supplies to be made available to purchase in the following categories of corrections supplies and equipment.

1. Clothing and Uniforms for Incarcerated /Institutionalized Persons
2. Undergarments for Incarcerated /Institutionalized Persons
3. Footwear for Incarcerated /Institutionalized Persons
4. Personal Hygiene & Personal Care Products
5. Mattresses & Linens
6. Facility – Evidence & Inmate Property Storage
7. Facility - Kitchen
8. Facility - Laundry Supplies & Equipment
9. Recreation Equipment (such as exercise equipment, sports equipment, etc.)

#### **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 2023, contractors reported a combined **\$20.5 billion** in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP. This RFP constitutes the first iteration of a NASPO ValuePoint portfolio established for products and supplies for correctional institutions, so no historical spend data exists. Market research and internal state membership polling indicate this to be a very attractive portfolio opportunity for NASPO Members.

More information about NASPO, NASPO ValuePoint, and the NASPO ValuePoint Lead State Model can be found at [www.naspo.org](http://www.naspo.org) and [www.naspovaluepoint.org](http://www.naspovaluepoint.org) and in Attachment E, Participation Information.



## GENERAL INFORMATION AND INSTRUCTIONS

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

**Michael Speakmon, CPPO**

Procurement Director, Goods & Services Statewide Term Contracts  
State of South Carolina

[mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov) 803-737-9816

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

<https://apps.sceis.sc.gov/SCSolicitationWeb/solicitationSearch.do?searchgroup=MMO&searchstatus=O&searchlimit=500&btnSearch=on>

If the solicitation does not appear on the page using the link above, use these instructions to search for a specific solicitation.

1. Enter the solicitation number (5400027173) in the "Solicitation Number" box on the left.
2. Ensure "Open" is selected in the "Solicitation Status" section.
3. Click on the "Search" button.

**D. 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, Question & Answer Template

**E. Important Dates.**

1. **RFP Open Date:** September 3, 2024
2. **RFP Pre-proposal Conference:** September 16, 2024, 2:00 PM Eastern
3. **RFP Q&A Deadline:** September 18, 2024, 12:00 PM Eastern
4. **RFP Close Date:** October 21, 2024, 11:00 AM Eastern

Attendance at the RFP Pre-proposal Conference is optional, and registration is not required.

The conference will be conducted entirely via Microsoft Teams at no cost to the participants. A computer is required to attend the meeting, but a camera is not. If you would like to participate in the conference, click on the "Pre-Bid Meeting Registration Link" below.

**[Pre-Proposal Meeting Link](#)**

Should you have trouble with the link above, or you would prefer to call in from a phone, please email Michael Speakmon for attendance instructions no later than Thursday,



September 12<sup>th</sup>, at 2:00 PM. Note in the Subject line: "NASPO Correction Supplies Pre-Proposal Conference Instructions." Attendance information and links will be provided one business day before the conference.

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

**F. 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, send your questions via email to the "RFP Contact" using the form in Attachment L. Questions must reference the specific section of the RFP to which the question relates.
3. For assistance with technical issues associated with the Offer Submission Website, contact the SCEIS Helpdesk at 803-896-0001.

**G. 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 by electronically uploading it in the SCEIS system.

**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.

The initial term of the Master Agreement(s) resulting from this RFP is anticipated to be one (1) year, with the option to exercise renewals totaling up to an additional four (4) years following the initial term. Master Agreements will automatically extend into the next term unless the Lead State or the Contractor exercise their right not to renew as defined in the Master Agreement.

**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 Submission Website;  
<https://vendorportal.sc.gov/irj/portal>



2. A copy of the South Carolina Cover Page and Page 2.
3. Completed and signed Attachment G, Offeror Information, Acknowledgements, and Certifications
4. Completed Attachment H, Offeror Response Worksheet
5. Completed Attachment I, Cost Proposal, submitted as a separate document and separate file
6. Completed Attachment J, Proposed Modifications to Sample Master Agreement
7. Redlined copy of Attachment D, Sample Master Agreement, if proposing modifications
8. Completed and signed Attachment K, Claim of Business Confidentiality
9. 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
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6. Attachment E, Participation Information
7. Attachment F, Protest Information

#### 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 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.
2. **Stage 2: 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. Offerors earning a minimum of 75% of the available points will move on to Stage 3: Cost Evaluation. The proposal of any offeror not earning a minimum of 75% of the available points will be rejected.
3. **Stage 3: Cost Evaluation.** Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated based on the total price of the market basket elements, the percent discount offered, and the volume discount offered. See Attachment C, RFP Evaluation Plan. 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.
4. All scores will be totaled to arrive at the Offeror's total scored evaluation. See Attachment C, RFP Evaluation Plan.
5. Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated, and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice.



Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. 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.

6. 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(s) 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. Award may 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 Lead State will post the public notice of Intent to Award to their website.

|                                                                                   |                                                                                                 |                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p align="center"><b>State of South Carolina</b></p> <p align="center">Request for Proposal</p> | <p>Solicitation: <b>5400027173</b><br/> Date Issued: 09/03/2024<br/> Procurement Officer: MICHAEL SPEAKMON, CPPO<br/> Phone: 803-737-9816<br/> E-Mail Address: <a href="mailto:mspeakmon@mmo.sc.gov">mspeakmon@mmo.sc.gov</a><br/> Mailing Address: SFAA, Div. of Procurement Services<br/> 1201 Main Street, Suite 601<br/> Columbia SC 29201</p> |
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DESCRIPTION: **STC for Products & Supplies for Correctional Facilities & Incarcerated Individuals**

USING GOVERNMENTAL UNIT: **Statewide Term Contract**

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **10/21/2024 11:00 AM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **09/18/2024 12:00 PM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **ONE (1) Electronic Media Copies of Technical & Price Proposals, One (1) Redacted Copy** via electronic media (marked "redacted"), (See "Ownership and Disclosure of Proposals" & "Disclosure of Your Bid/Proposal and Submitting Confidential Information" [See **"Online Bidding Instructions" in Attachment A**]

**Initial here if NO redacted copy is necessary \_\_\_\_\_**

CONFERENCE TYPE: **Pre-Proposal**  
DATE & TIME: **09/16/2024 2:00 PM**

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

LOCATION: **This meeting will be via Microsoft Teams only. Refer to Important Dates, in the "RFP Overview" document for instructions to attend the meeting.**

AWARD &  
AMENDMENTS

Award will be posted on **12/09/2024**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of one hundred eighty (180) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

|                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NAME OF OFFEROR<br><br><small>(full legal name of business submitting the offer)</small>                                         | Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc. |
| AUTHORIZED SIGNATURE<br><br><small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small> | DATE SIGNED                                                                                                                                                                                                                                                                                                                                                                                        |
| TITLE<br><br><small>(business title of person signing above)</small>                                                             | STATE VENDOR NO.<br><br><small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>                                                                                                                                                                                                                                                  |
| PRINTED NAME<br><br><small>(printed name of person signing above)</small>                                                        | STATE OF INCORPORATION<br><br><small>(If you are a corporation, identify the state of incorporation.)</small>                                                                                                                                                                                                                                                                                      |

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)

☐ Sole Proprietorship ☐ Partnership ☐ Other \_\_\_\_\_

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COVER PAGE - ON-LINE ONLY (MAR. 2015)



**REQUEST FOR PROPOSALS**  
**for**  
**Products and Supplies for Correctional**  
**Facilities and Incarcerated Individuals.**

**Issued by**  
**the STATE OF SOUTH CAROLINA**



**In collaboration with**





## **SOLICITATION NUMBER 5400027173**

### **RFP**

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Procurement Director, Goods & Services Statewide Term Contracts  
State of South Carolina

[mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov) 803-737-9816

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  - d. Clearly demonstrates your ability to meet the Scope of Work described in Section III and Attachment B and
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<https://vendorportal.sc.gov/irj/portal>



2. A copy of the South Carolina Cover Page and Page 2.
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4. All scores will be totaled to arrive at the Offeror's total scored evaluation. See Attachment C, RFP Evaluation Plan.
5. Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated, and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice.



Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. 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.

6. 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(s) 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. Award may 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 Lead State will post the public notice of Intent to Award to their website.



## Attachment A **Amendment #1** RFP TERMS AND CONDITIONS

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

### I. DEFINITIONS

- A. **Amendment** means a document issued to supplement the original solicitation document.
- B. **Authority** means the State Fiscal Accountability Authority or its successor in interest.
- C. **Award** or **award** means the identification of Offerors eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation.
- D. **Business** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]
- E. **Change Order** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]
- F. **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.
- G. **Contract Modification** means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]
- H. **Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
- I. **Cover Page** means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.
- J. **Day** means a calendar day, unless otherwise indicated.
- K. **Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- L. **Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- M. **Lead State** means the State issuing this RFP.
- N. **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.
- O. **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.
- P. **NASPO** means the National Association of State Procurement Officials.
- Q. **NASPO ValuePoint** means the cooperative contracting division of NASPO.
- R. **Offer** means the bid or proposal submitted in response to this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
- S. **Offeror** means an entity or individual submitting a proposal in response to this RFP.
- T. **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.
- U. **Page Two** means the second page of the original solicitation, which is labeled Page Two.



- V. 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.
- W. Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- X. Procurement Officer** means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.
- Y. 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.
- Z. 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.
- AA. 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.
- BB. RFP Close Date** means the date and time identified in Section II.D.4 of the RFP Overview.
- CC. RFP Contact** means the individual identified in Section II.A of the RFP Overview.
- DD. RFP Open Date** means the date and time identified in Section II.D.1 of the RFP Overview.
- EE. RFP Q&A Deadline** means the date and time identified in Section II.D.3 of the RFP Overview.
- FF. RFP Website** means the website identified in Section II.B of the RFP Overview.
- GG. Solicitation Number** means the number identified on the cover page of the RFP Overview and in the header of each attachment to this RFP.
- HH. You** and **Your** means Offeror.
- II. Solicitation** means this document, including all its parts, attachments, and any Amendments.
- JJ. Subcontractor** means any person you contract with to perform or provide any part of the work.
- KK. Us** or **We** means the Using Governmental Unit.
- LL. Using Governmental Unit** means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."
- MM. Work** means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

## 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. GENERAL INSTRUCTIONS

- A. AUTHORIZED AGENT (FEB 2015):** All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract.
- B. AWARD NOTIFICATION (MAR 2024):** Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, the most recent notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value more than one hundred thousand dollars, such notice will be sent electronically to all Offerors responding to the Solicitation. Unless a written notice of intent to protest is timely filed pursuant to Section 11-35-4210(1)(b) or the award is otherwise suspended or canceled, the award will be effective on the calendar day (including weekends and holidays) immediately following the seventh business day after such notice is given.
- C. BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004):** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.
- D. BID ACCEPTANCE PERIOD (JAN 2004):** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.
- E. AUTHORITY AS PROCUREMENT AGENT (DEC 2015):** The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit and bears no liability for any party's losses arising out of or relating in any way to the contract. ASDFG
- F. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAR 2024):** GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.
- (a) By submitting an offer, the offeror certifies that-
- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory-
- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or
- (2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs



(a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**G. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004):**

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

**H. CODE OF LAWS AVAILABLE (JAN 2006):** The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:



<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:

<http://www.scstatehouse.gov/coderegs/statmast.php>

**I. DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (APR 2023):**

("OCI FAQ for Contractors" is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))

(a) You certify that, to the best of your knowledge and belief:

(1) your offer identifies any services that relate to either this solicitation or the work and that have already been performed by you, a proposed subcontractor, or an affiliated business or consultant of either; and

(2) there are no relevant facts or circumstances that may give rise to an actual or potential organizational conflict of interest, as defined in S.C. Code Ann. Reg. 19- 445.2127, or that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award.

(b) If you, a proposed subcontractor, or an affiliated business or consultant of either, have an unfair competitive advantage or a significant actual or potential conflict of interest, the State may withhold award. Before withholding award on these grounds, the State will notify you of the concerns and provide a reasonable opportunity for you to respond. The State may consider efforts to avoid or mitigate such concerns, including restrictions on future activities. (c) The certification in paragraph (a) of this provision is a material representation of fact upon which the State will rely when considering your offer for award.

**J. DEADLINE FOR SUBMISSION OF OFFER (JAN 2004):** Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)]

**K. DRUG FREE WORKPLACE CERTIFICATION (JAN 2004):** By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**L. DUTY TO INQUIRE (FEB 2015):** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors."

**M. ETHICS CERTIFICATE (MAY 2008):** By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in



- awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.
- N. MULTIPLE OFFERS (MAR 2024):** Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted or uploaded as a separate document and must clearly indicate that it is a separate offer. If this solicitation is a Request for Proposals, multiple offers may be submitted or uploaded as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
- O. OMIT TAXES FROM PRICE (JAN 2004):** Do not include any sales or use taxes in Your price that the State may be required to pay.
- P. OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.
- Q. PRICING (MAR 2024):** (a) Fixed Price. If a fixed price is required, award will not be made on an Offer if the total possible price to the State cannot be determined. (b) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. S.C. Code Ann. Reg. 19-445.2070E. (c) Unbalanced Pricing. The State will analyze all offers with separately priced line items or subline items to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more-line items is significantly over or understated. The responsible procurement officer may reject an offer as unreasonably priced if she determines that unbalanced pricing increases performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices. S.C. Code Ann. Reg. 19-445.2122C.
- R. PROTESTS (MAR 2024):** (a) If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest the solicitation or an amendment, your written protest must be received within fifteen Days of the date the applicable solicitation document is issued. To protest an award, (i) written notice of your intent to protest must be received within seven Business Days of the date the award notice is posted, and (ii) your actual written protest must be received within fifteen Days of the date the award notice is posted. Time periods are computed in accordance with Section 11-35-310(13) and the definitions for Day and Business Day. Both protests and notices of intent to protest must be received by the appropriate Chief Procurement Officer (CPO). See clause entitled "Protest-CPO." (b) Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to DocReq@mmo.sc.gov . If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at [www.procurement.sc.gov/legal](http://www.procurement.sc.gov/legal)
- S. PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015):** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.
- (a) During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by



- the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010]
- (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165]
- T. QUESTIONS FROM OFFERORS (FEB 2015):** (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140]
- U. REJECTION/CANCELLATION (JAN 2004):** The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065]
- V. RESPONSIVENESS (MAR 2024):** (a) Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the State, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements. (b) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- W. SIGNING YOUR OFFER (JAN 2004):** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.
- X. STATE OFFICE CLOSINGS (JAN 2004):** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be



issued to reschedule the conference. Useful information may be available at:

<https://scemd.org/closings/>

**Y. DISCLOSURE OF YOUR BID / PROPOSAL and SUBMITTING CONFIDENTIAL DATA (FEB 2021):**

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.

(b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.)



**Z. SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015):** Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." Paper offers are discouraged. If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.

**AA. TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (APR 2024):**

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Schedule TC-2, "Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Business." A copy of the subcontractor's certificate from the Division of Small and Minority Business Contracting and Certification is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, <http://dor.sc.gov>. Questions regarding subcontractor certification are to be referred to: Division of Small and Minority Business Contracting and Certification, <http://smbcc.sc.gov>.

**BB. VENDOR REGISTRATION MANDATORY (MAR 2024):** You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select Doing Business with Us. Then select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered and know your User ID and Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at South Carolina Business One Stop, <http://scbos.sc.gov>)

**CC. WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004):** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if,



before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

**DD. QUESTIONS FROM OFFERORS - AMENDMENT (Modified)**

The solicitation is amended as provided herein. Information or changes resulting from questions will be shown in a question-and-answer format or made directly in the document and attachments. Questions received have been reprinted and provided. The "Lead State's Response" should be read without reference to the questions. The questions are included solely to provide a cross-reference to the potential offeror that submitted the question. Questions do not form a part of the contract; the "Lead State's Response" does. Any restatement of part or all of an existing provision of the solicitation in an answer does not modify the original provision except as follows: underlined text is added to the original provision. Stricken text is deleted.

**V. SPECIAL INSTRUCTIONS**

**A. MAIL PICKUP (JAN 2006):** The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer.

**B. ON-LINE BIDDING INSTRUCTIONS (MODIFIED):**

(a) Mandatory Registration. You must register before you can submit an offer on-line See clause entitled "VENDOR REGISTRATION MANDATORY."

(b) Steps for On-Line Bidding

#1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

#2 Follow the general user instructions posted at [www.procurement.sc.gov](http://www.procurement.sc.gov) under the heading "Doing Business with Us" and then "Submitting Offers."

#3 Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.

Only offers with a status of "submitted" have been received by the State.

Offers with a status of "saved" have not been received.

#4 Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted.

(c) If you have problems entering an on-line offer, you must contact the SCEIS Help Desk for assistance at (803) 896-0001 and follow the prompts. You may also contact the SCEIS Help Desk on-line at <http://www.sceis.sc.gov/vendorrequests/>. Do not contact the Procurement Officer with problems entering an offer into the system. Only questions regarding the solicitation document should be addressed with the Procurement Officer.

(d) Do not wait until the last minute to submit your offer. If an on-line offer is not completed and in a submitted status prior to the submission deadline, the offer will not be considered for award.

**C. PROTEST - CPO - MMO ADDRESS (MAR 2024):**

**Request for Proposals for**  
**Products and Supplies for Correctional Facilities and Incarcerated Individuals.**



Issued by the **State of South Carolina**  
**Solicitation Number 5400027173**

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing:

- (a) by email to [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us), or
- (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

**D. UNIT PRICES REQUIRED (JAN 2006):** Unit price to be shown for each item.

**E. IMPORTANT TAX NOTICE - NONRESIDENTS ONLY:**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the South Carolina Department of Revenue at 1-844-898-8542 or visit the Department's website at: [www.dor.sc.gov](http://www.dor.sc.gov)

- F.** This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration and withholding tax questions should be directed to the South Carolina Department of Revenue at 1-844-898-8542. Additional contact information can be found by visiting the Department's website at [www.dor.sc.gov](http://www.dor.sc.gov)

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: [www.dor.sc.gov](http://www.dor.sc.gov)

**VI. 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 and Negotiations - Optional (FEB 2015).** Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated, and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original 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 South Carolina Regulation 19-445.2085.
- 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.

## VII. 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. 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.
- G. 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.

## VIII. 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

**Request for Proposals for**  
**Products and Supplies for Correctional Facilities and Incarcerated Individuals.**



Issued by the **State of South Carolina**  
**Solicitation Number 5400027173**

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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 **Amendment #1** 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 State of South Carolina, Division of Procurement Services (Lead State) is requesting proposals for Products and Supplies for Correctional Facilities and Incarcerated Individuals 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

#### A. Product Categories

##### 1. Products & Supplies for Correctional Facilities and Incarcerated Individuals

The award of this RFP will cover categories which contain products and supplies for correctional facilities and incarcerated individuals which will include:

- a. Clothing and Uniforms for Incarcerated /Institutionalized Persons
- b. Undergarments for Incarcerated /Institutionalized Persons
- c. Footwear for Incarcerated /Institutionalized Persons
- d. Personal Hygiene & Personal Care Products
- e. Mattresses & Linens
- f. Facility – Evidence & Inmate Property Storage
- g. Facility - Kitchen
- h. Facility - Laundry Supplies & Equipment
- i. Recreation Equipment (such as exercise equipment, sports equipment, etc.)

##### 2. Volume Discounts for Available Products

Attachment I, Cost Proposal allows Offerors to offer volume discounts for available products where they would apply. Many correctional facilities prefer to make one-time large quantity purchases rather than many smaller purchases of certain items throughout any given year. Offering a volume discount for products that they may be available for is a very attractive option to these facilities. Offerors may offer volume discounts on any categories and/or specific products within a category as they are available.

### IV. CONTRACTOR RESPONSIBILITIES AND TASKS

- A. 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.

1. 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.
2. 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.
3. 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.
4. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

#### **B. Licensing**

1. 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.
2. License requirements for states participating in the contract will be addressed in each state's participating addendum.
3. 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.

#### **C. Ordering**

1. No minimum orders will be considered under this Contract. Please see the pricing attachment for value-added incentive volume discount request.
2. 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.



3. 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).

**D. 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.

**E. 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.

**F. Warranty – Equipment/Options/Accessories/Attachments**

1. 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.
2. The Contractor warrants that at the time of delivery, all products 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.
3. 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.
4. 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.
5. 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.
6. Before actual warranty work begins, ownership of the products shall be established to ensure the products 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 product: (1) Name of Purchasing Entity and division, if applicable. Make and Model of the product, and Control number of Purchasing Entity (Inventory number).
7. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.
8. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work.



9. 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.
10. Products 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 property in the Contractor's possession.

#### **G. Quality of Parts**

1. Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the Purchasing Entity contact person.
2. 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.
3. All rebuilt or remanufactured parts must meet the same requirements as listed above.
4. 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 products they carry.
5. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

#### **H. 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.

#### **I. Repair Facilities**

Repair facilities that will perform the warranty work of items under this Contract shall be identified as authorized by the Contractor to perform such work for the manufacturer. The Contractor is responsible for ensuring that the facilities adhere to the contract requirements for warranty work performance.

#### **J. Freight/Shipping/Set-up Fees**

1. Freight from the factory to the customer is the responsibility of the Contractor.
2. Delivery is to be FOB Destination (of ordering entity).
3. Under certain circumstances, additional freight, shipping, and handling costs may be permitted. If so, 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. All additional fees/costs must appear on the quote and approved by the ordering entity prior to the Contractor accepting the PO.

#### **K. Delivery**

1. Delivery of products shall be stated in each quotation. It is preferable to expect delivery within 30 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.

2. All products shall be delivered new, unused and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Contractor until delivered and accepted.
3. 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 Contractor shall seek clarification from the ordering party and/or the Contracting Officer.
4. If applicable, one operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased at no additional cost.

#### **L. 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.

An adjustment to the contracted percent discount will require approval by the Lead State. The Contractor is responsible for providing sufficient documentation and justification to support the request. Documentation may include but is not limited to: 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.

#### **M. 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.

#### **N. 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.



**O. 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.

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.

**P. Product Volume Discounts**

Product Volume Discounts have been included with Attachment I, Cost Proposal:

- Product Volume Discount

Many correctional facilities prefer to place single, larger orders rather than many smaller orders throughout the year. As a value-added option, the Offeror may provide volume discounts for larger single orders of products and supplies.

Due to the large variance of products available, and as the subject matter 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 products 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.

Submission of items will be included in the total value-added scoring evaluation.

**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: 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                                                   | 300                       |                                   |
| Customer Service                                                      | 100                       |                                   |
| Product Selection/Availability                                        | 150                       |                                   |
| Implementation and Promotion of the NASPO ValuePoint Master Agreement | 50                        |                                   |
| <b>Stage 2 Total:</b>                                                 | <b>800</b>                |                                   |

Technical Evaluation. This portion of the evaluation has 800 points available. Evaluation panel members will individually score the criteria listed above, excluding the Total Number of Categories Offered criteria (see below). The average score for all evaluators for each category will be added to reach the total score for the technical evaluation for each offer.

| Criteria                           | Technical Points Possible | Offeror's Technical Points Earned |
|------------------------------------|---------------------------|-----------------------------------|
| Total Number of Categories Offered | 200                       |                                   |
| <b>Stage 2 Total:</b>              | <b>200</b>                |                                   |

Total Number of Categories Offered. This portion of the evaluation has 200 points available. It is preferred that Offerors make an offer on all categories, but it is not required. This factor will evaluate the total number of categories offered, meaning the more categories offered will result in a higher number of points. The evaluation will be based on the following criteria:

- Eight to Nine Categories Offered – 200 Points
- Five to Seven Categories – 150 Points
- Three to Four Categories – 100 Points
- Less than Three Categories – 50 Points

Upon final Stage 2 evaluation, all vendors who scored at least 75% of available points of the combined Technical Evaluation and Total Number of Categories Offered will move on to the Stage 3 Cost Evaluation.

**Request for Proposals for  
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**Solicitation Number 5400027173**

**Stage 3: 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 Price Evaluation |             |                | 180                  |                              |
| Discount % Off Evaluation      |             |                | 180                  |                              |
| Volume Discount Evaluation     |             |                | 180                  |                              |
| <b>Total:</b>                  |             |                | <b>540</b>           |                              |

a. Market Basket Price Evaluation. In this portion of the Cost Evaluation there are 180 points available, 20 points per category. Offerors only need to complete the market baskets for the category(ies) they are bidding on, but they **MUST** make an offer on all items within the category. The total cost of the market basket for that category will be evaluated against all other Offerors for the same category. Points will be awarded to each Offeror using the formula **Lowest Cost / Offeror's Cost x Cost Points Possible** for each category. Points awarded for each category will be totaled for each Offeror and the result will be the total points awarded for the Market Basket Price Evaluation. 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 180 points available, 20 points per category. 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 Discount Points Available**. 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.

c. Volume Discount Evaluation. In this portion of the Cost Evaluation there are 180 points available, 20 points per category. 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 Discount Points Available**. 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      | 800                   |                               |
| Total Number of Categories Offered | 200                   |                               |
| Cost Evaluation                    | 540                   |                               |
| <b>Total:</b>                      | <b>1540</b>           |                               |

**Request for Proposals for**  
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**Award Selection**

All Offerors earning a minimum of 1020 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 1020 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 by NASPO ValuePoint and the state of South Carolina, a public Notice of Intent will be posted on the South Carolina website.



## ATTACHMENT D **Amendment #1**

### SAMPLE MASTER AGREEMENT

#### NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

##### I. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (*i.e.*, colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and



conditions, etc.).

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

## II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for one (1) year from the effective date. This Master Agreement shall automatically renew beyond the initial term for 4 additional years, with four separate one (1) year extensions, unless the Contractor receives notice that the Lead State elects not to renew the contract (see Term of Contract – Option to Renew below), or the Contractor exercises their rights under the Term of Contract – Termination by Contractor clause below. The term of this Master Agreement may be amended beyond the initial term for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.



### III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
  - 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
  - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
  - 3.1.4** Schedules and Attachments expressly incorporated into this contract;
  - 3.1.5** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
  - 3.1.6** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. 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
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

### IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements,



defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

- 4.3 Scope of Work Updates.** At the discretion of the Lead State, and subject to agreement by the parties, the scope of this Master Agreement may be amended to include or accommodate new or updated models, versions, or technologies related to the objectives and deliverables set forth in the Solicitation.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.

#### **4.6 Participating Entities.**

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



- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the Solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

## V. NASPO ValuePoint Provisions

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.
- 5.2 Administrative Fees**
- 5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable.



This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's Solicitation.

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

### **5.3 NASPO ValuePoint Summary and Detailed Usage Reports**

**5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). By placing an Order under this Master Agreement, a Purchasing Entity agrees to have their data (i) included in reports submitted by Contractor to NASPO ValuePoint and (ii) used by NASPO ValuePoint as set forth in this Master Agreement without limitation, unless otherwise requested in writing by the Purchasing Entity and agreed to in writing by NASPO. Timely and complete reporting of Sales Data by Contractor is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

**5.3.2 Summary Sales Data.** "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

**5.3.3 Detailed Sales Data.** "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-



item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

**5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor's part number or SKU for each Product in Offeror's catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor's customer lists and product catalog change.

**5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

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



## 5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

- 5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.
- 5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## 5.5 NASPO ValuePoint eMarketPlace

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



- 5.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.
- 5.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (i.e., hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.
- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms and pricing of this Master Agreement.
- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements



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

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

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

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

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

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

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

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

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



following:

- 5.5.12.1** The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;
- 5.5.12.2** A Lead State contract identification number for this Master Agreement;
- 5.5.12.3** Detailed product line item descriptions;
- 5.5.12.4** Pictures illustrating products, services, or solutions where practicable; and
- 5.5.12.5** Any additional NASPO, Lead State, or Participating Addendum requirements.

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

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

**5.8 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

## VI. Pricing, Payment & Leasing

**6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.



- 6.1.1 All prices and rates must be guaranteed for the initial term of the Master Agreement.
  - 6.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 90 days prior to the effective date.
  - 6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
  - 6.1.4 No retroactive adjustments to prices or rates will be allowed.
- 6.2 **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (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 or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 6.3 **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

## VII. Ordering

- 7.1 **Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 **Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 **Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to



become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

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

**8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

**8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

**8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

**8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

**8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's



Purchase Order number.

## IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
- 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.
- 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.
- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.



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

## X. Warranty

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

## XI. Product Title

- 11.1 **Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 **Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity



shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

- 11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

## **XII. Indemnification**

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

**12.1.1** Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

- 12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

**12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
- 12.2.1.2** specified by the Contractor to work with the Product;
- 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- 12.2.1.4** reasonably expected to be used in combination with the Product.



- 12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **XIII. Insurance**

- 13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.



- 13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 13.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 13.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

#### **XIV. General Provisions**

##### **14.1 Records Administration and Audit**

- 14.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final



payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

- 14.1.2 Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- 14.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement that requires the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

## 14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.
  - 14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").
  - 14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.
  - 14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of



Contractor who can be shown to have had no access to the Confidential Information.

- 14.2.2 Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.
- 14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
- 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
- 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings,



in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

**14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

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

#### **14.3 Assignment/Subcontracts**

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

**14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

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

**14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating



Addendum or Order.

- 14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
- 14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 14.8 Defaults and Remedies**
- 14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.8.1.1** Nonperformance of contractual requirements;
- 14.8.1.2** A material breach of any term or condition of this Master Agreement;
- 14.8.1.3** Any certification, representation or warranty by Contractor in response to the Solicitation or in this Master Agreement that proves to be untrue or materially misleading;
- 14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- 14.8.1.5** Any default specified in another section of this Master Agreement.
- 14.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably



necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

- 14.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
- 14.8.3.1** Any remedy provided by law;
  - 14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
  - 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
  - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
  - 14.8.3.5** Suspension of Contractor's performance; and
  - 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.8.5** If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- 14.8.6** If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans,



drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

**14.8.7** The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

**14.8.8** The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

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

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

#### **14.11 No Waiver of Sovereign Immunity**

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



any claim or from the jurisdiction of any court.

- 14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **14.12 Governing Law and Venue**

- 14.12.1** The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award will be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.
- 14.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 14.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

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

- 14.14 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or



Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

## XV. Special Provisions

- 15.1 Equal Opportunity.** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.
- 15.2 False Claims.** According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
- 15.3 Open Trade.** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

### 15.4 Changes.

**15.4.1 Contract Modification.** By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- 15.4.1.1** drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- 15.4.1.2** method of shipment or packing;
- 15.4.1.3** place of delivery;
- 15.4.1.4** description of services to be performed;
- 15.4.1.5** time of performance (i.e., hours of the day, days of the week, etc.); or,
- 15.4.1.6** place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

**15.4.2 Adjustments of Price or Time for Performance.** If any such change 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 in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause 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 State promptly and duly make such 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 an extension of time for completion.

**15.4.3 Time Period for Claim.** Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

**15.4.4 Claim Barred After Final Payment.** No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

**15.5 Compliance with Laws.** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**15.6 Contractor's Use of State Property.** Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work

**15.7 Estimated Quantities – Purchases from Other Sources.** The State may bid separately any unusual requirements or large quantities of supplies covered by this contract.

**15.8 Estimated Quantity Unknown.** The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

**15.9 Illegal Immigration.** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language



requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

#### **15.10 Price Adjustments.**

**15.10.1 Method of Adjustment.** Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

**15.10.1.1** by agreement on a fixed price adjustment before

commencement of the pertinent performance or as soon thereafter as practicable;

**15.10.1.2** by unit prices specified in the Contract or subsequently agreed upon;

**15.10.1.3** by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

**15.10.1.4** in such other manner as the parties may mutually agree; or,

**15.10.1.5** in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

**15.10.2** Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

**15.11 Pricing Data – Audit – Inspection.** [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated



in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

- 15.12 Statewide Term Contract – Scope.** The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations.
- 15.13 Term of Contract – Option to Renew.** At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of (1) one year, unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.
- 15.14 Term of Contract – Termination By Contractor.** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least 90 days prior to the expiration of the then current term.



**Amendment #1**  
**Questions and Answers**  
**Solicitation 5400027173**

1. Coat, Blue – Is unlined acceptable? Reference Attachment L: 1- Clothing – Outerwear

*Lead State's Response: This item has been removed from the market basket.*

2. Mattress Covers- mattress cover, navy, what material should the cover be sheet, vinyl, or heavy-duty cloth? Reference Attachment L: 5 -Mattress / Linens

3. Mattress Covers – mattress cover, white, what material should the cover be sheet, vinyl, or heavy-duty cloth? References Attachment L: 5 – Mattress / Linens

*Lead State's Response (Q2-Q3): These items have been updated to include vinyl material.*

4. Tear Resistant T-Will – Would navy be acceptable color option? Also, will size 58"x 90" be acceptable? References Attachment L: 5 – Sheets

5. Is 32"H x 76" L x 27" D, 10 Gauge acceptable for the metal bunk? References Attachment L: 6 – Facility Furniture

6. Is a 6 Grommet Size 36"x77" Acceptable? References Attachment L: 6 – Shower Curtains

*Lead State's Response (Q4-Q6): These items have been removed from the market basket.*

7. Is mesh an acceptable material for the hospital hampers bags? References Attachment L: 8 – Laundry Hampers

*Lead State's Response: Yes, the specification has been changed to mesh.*

8. Steele Canvas Maxi – would yellow be an acceptable cover? References Attachment L: 8 – Laundry Utility Trucks

*Lead State's Response: Yes, the specification has been changed to "Any color will suffice."*

9. Gloves Nitrile – Are 3.1 mil palm thickness and 4 mil finger thickness acceptable? References Attachment L: 4 – Other Subcategories



10. Latex Gloves – are 5.0 mil palm thickness and 5.2 mil finger thickness acceptable? References Attachment L: 6 – Facility – Evidence, Examination Gloves
11. Powdered Nitrile – are powder free acceptable? References Attachment L: 6 – Facility Evidence, Examination Gloves
12. Powdered Nitrile – are 3.1mil palm thickness and 4 mil finger thickness acceptable? References Attachment L: 6 – Facility Evidence, Examination Gloves
13. Powdered Latex – are 3.9 mil palm thickness and 3.5 mil finger thickness acceptable? References Attachment L: 6 – Facility Evidence Examination Gloves
14. What color should the nitrile, latex, powdered nitrile, and powdered latex be, or does it matter?

**Lead State's Response:** *These items have been removed from the market basket.*

15. Can we obtain a better description of this item? Can the measurements vary? References Attachment L: 8 – Strong Box
16. Measurements are similar to a gun locker, is that the intended item? If so, how many compartments are expected? References Attachment L: 8 – Hanging Locker

**Lead State's Response:** *These items have been removed from the market basket.*

17. Will fluoride-free be acceptable? References Attachment L: 4 – Toothpaste

**Lead State's Response:** *This item has been deleted from the market basket.*

18. For the Fire-Retardant option, should the measurement be standard size 20x30? References Attachment L: 5 – Pillowcases

**Lead State's Response:** *The specification has been changed to 20x30.*

19. "Under certain circumstances" – Is this intended to address the additional freight and shipping required to ship to Alaska and/or Hawaii? Since most list price is FOB Continental United States. References Attachment B: J - 1-3
20. Does this bid require shipments to Hawaii?
21. Do shipments to Alaska and Hawaii have to be at the offeror's proposal cost or do these destinations qualify as a special circumstance? Reference A 12 and D4



**Lead State's Response (Q19-Q21):** No change. Per Attachment B, Scope of Work, Freight/Shipping/Set-up Fees is the responsibility of the Contractor and delivery is to be FOB Destination. Under certain circumstances, states may address freight, shipping and/or set-up fees through a participating addendum (PA) referencing the fully executed Master Agreement (MA).

22. What are circumstances where additional freight shipping and handling cost may be permitted. Would shipment to Alaska and Hawaii qualify? Reference C4 and J.

**Lead State's Response:** No change. We cannot speculate on any specific example of when additional shipping and handling costs may occur because we do not know the breadth of what type of equipment or supplies will be purchased by any individual entity. If an entity orders something that may require shipping and handling charges outside the Contractor's capability, then the Contractor needs to discuss that with the ordering entity prior to accepting the purchase order.

23. Does shipping need to be included in catalog pricing due to freight being significantly different between South Carolina vs North Dakota?

**Lead State's Response:** No change. Shipping must be included in the contracted catalog discount.

24. Is there more than one delivery location? If so, how many?

**Lead State's Response:** No change. Each ordering entity may have one or more delivery locations and each location will be clearly identified on each purchase order.

25. Where do vendors submit value add services pricing and options such as screen printing and embroidery services? References Attachment I: Market Basket Evaluation

**Lead State's Response:** No change. These services are not a requirement of this solicitation but vendors may add their value add pricing as a separate document for information purposes only and will not be valued but made available under the contract.

26. We are a manufacturer and supplier for items listed in one category. We specialize in this category and could be competitive on pricing, discount and volume discounts. We do not supply other categories and it would be difficult to bid all items in other categories. We do not normally supply. It appears in the RFP evaluation plan if we bid one category, even if awarded full points for the technical and cost evaluation, we would not be able to score enough points to be eligible for a Master Contract Award. Is this correct? Reference Attachment C Page 3 Award Selection

27. We provide secure video games systems to correctional facilities. Would our products qualify as Recreation Equipment such as exercise equipment, support equipment etc.?



**Lead State's Response Q26-Q27):** No change. It is the intention of this solicitation to award contracts to only those vendors who can provide multiple categories of equipment to the ordering entities. Awarding contracts to multiple vendors by a single category is extremely inefficient for both the contract administration by the Lead State and creates a cumbersome ordering process for the using entities. Vendors who specialize in only one or two of the categories, or only specialize in some of the items in one category, are not the targeted vendor pool for this solicitation.

28. Can you tell me if we must respond to each item in a category? Meaning do we have to be able to supply all items listed in the category to be considered responsive?
29. Are we able to bid on individual items in a specific category or do we have to bid entire category for this solicitation?

**Lead State's Response (Q28 & Q29):** No change. Offerors must submit an offer for every line item listed in a category they are submitting an offer for. Failure to submit on all line items within a category will make the offer non-responsive for that category.

30. Is the bid awarded by line item or by category?

**Lead State's Response:** No change. Awards will be made by category.

31. #233 Clear tumbler, 22 oz, 500 ea/cs are the tumblers disposable or is the UOM incorrect? Reference Category 7 Kitchen Market Basket Evaluation.

**Lead State's Response:** This item has been removed from the market basket.

32. #236 Flexible Silicone Clear Tray Lid – Is the tray lid to be silicone or just flexible? References Category 7 Kitchen Market Basket Evaluation

**Lead State's Response:** "Silicone" has been removed from the specification.

33. If our case pack quantities are different than those shown, should we provide our case pack price per case and also price per each? For example, our polypropylene sporks are 400ea/cs. How should we submit price so a fair assessment can be made? (With consideration to case pack being greater than that specified in the request) Reference Category 7 Kitchen Market Basket Evaluation.

**Lead State's Response:** No change. If the Offerors pack quantities are different than the listed quantities in the market basket, the Offeror should use the per unit price for the item based on their pack quantities and use that as the price for the pack quantity in the market basket. For example, if the requested pack



*quantity is 24 EA, and the Offerors pack quantity is 48 with a pack price of \$480, the offered price for the market basket will be \$240.*

34. Please extend the deadline for the submission of questions until 10/2/2024 to allow offerors sufficient time to review the basket of items and submit questions as required. Reference South Carolina Cover Page.

***Lead State's Response:*** *No change. The deadline will not be extended. The Lead State cannot anticipate when a potential offeror accesses the solicitation documents and cannot delay the process if a potential offeror accesses later than others.*

35. Who is the incumbent contractor? Please provide the applicable contract number and the pricing for the incumbent contract. References RFP
36. Based on previous order history, how often are the gloves, towels, washcloths and blankets ordered, weekly, bi-weekly, monthly or annually?

***Lead State's Response (Q35-Q36):*** *No change. As stated in the solicitation document, there is no current Master Agreement for these products and supplies so there is no incumbent vendor and no existing sales data to provide.*

37. This section is not applicable to the RFP. Please issue an amendment to remove this section in its entirety. References Attachment B Section IV B Licensing

***Lead State's Response:*** *The clause has been deleted.*

38. Please confirm offeror's may utilize their own list price when responding to Attachment I and are not limited to utilizing MSRP. Reference Attachment B Section IV L Price Adjustments, Attachment I

***Lead State's Response:*** *No change. Offerors must use the MSRP as instructed in order to ensure a fair evaluation against the other offers.*

39. Please confirm pricing included in Offeror's proposal responses is for evaluation purposes only and will not be incorporated into resultant contracts. Please issue an amendment to clarify as required. References Attachment B, Attachment D, Section VI 6.1 Pricing Attachment I

40. Please confirm only offeror proposed discount percentage from Attachment I will be incorporated into the resultant contracts (specifically excluding items listed prices). Please issue an amendment to clarify, as required. References Attachment B, Attachment D, Section VI 6.1 Pricing Attachment I



**Lead State's Response (Q39-Q40):** No change. The offer must be for the MSRP price of each item, minus the offered discount, at the time the offer is submitted. The resulting Master Agreement incorporates any changes to the catalog price during the term of the contract, and the ordering entity will pay the price for the items that is in effect at the time order is placed.

41. What is the administrative fee for Utah? Reference E62, 23

**Lead State's Response:** No change. Each state who issues a participating addendum will negotiate their fees with the Contractor.

42. Document Upload Process- Could you kindly clarify the procedure for uploading the completed proposal documents? Specifically, is there a preferred file format, and are there any guidelines or limitations regarding the size or type of files we can upload to the submission portal?

**Lead State's Response:** No change. Microsoft Excel files should be uploaded in their native format. Other files should be uploaded in their native format or in PDF form. The SCEIS system has a file size limit of 10MB per file, but no limit on the number of files you may attach.

*It is important to note that all files should be submitted in such a way that they can be accessed and evaluated by the Lead State and the evaluation panel. It is not anticipated that any single offer should need to be split into multiple files, but should that occur, the Offeror is responsible for ensuring the Lead State is able to clearly identify the different portions of the offer.*

43. Experience Requirement – We would also appreciate clarification on whether having prior experiences in similar projects is a mandatory requirement to submit a proposal. If it is not a strict requirement, would it be acceptable to highlight other relevant experience or capabilities?

**Lead State's Response:** No change. There is no restriction on a certain amount of experience required to be considered for award. Offerors are encouraged to provide the best information they have concerning their experience and qualifications for the evaluation panel to consider.

44. Are we required to submit a certificate of insurance with our bid?

**Lead State's Response:** No change. A Certificate of Insurance (COI) should be readily available and submitted by an awarded supplier to states with an active Participating Addendum (PA) prior to performance (acceptance and delivery on a PO).



## 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.

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

### Interested States

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

| Interested States | Reported Estimated Annual Volume | Sample Participating Addendum Terms and Conditions |
|-------------------|----------------------------------|----------------------------------------------------|
| Alaska            | \$2,500,000.00                   | N/A                                                |
| Colorado          | N/A                              | Exhibit A                                          |
| Hawaii            | \$2,500,000.00                   | N/A                                                |
| Nevada            | \$1,300,000.00                   | Exhibit B                                          |
| New Mexico        | N/A                              | Exhibit C                                          |
| North Dakota      | N/A                              | N/A                                                |
| Rhode Island      | N/A \$540,000.00                 | Exhibit D                                          |
| South Carolina    | \$1,000,000.00                   | Exhibit E                                          |
| South Dakota      | \$3,000,000.00                   | N/A                                                |
| Utah              | \$1,588,410.00                   | Exhibit F                                          |
|                   |                                  |                                                    |

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**TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: \$11,888,410**

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.



## Exhibit A

### Colorado Sample Participating Addendum Terms and Conditions

#### COLORADO SPECIAL PROVISIONS (Fiscal Rule 3-3, effective 7/1/22)

These Special Provisions apply to and shall be included in all State Contracts except where noted in italics.

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

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

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

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

##### C. GOVERNMENTAL IMMUNITY.

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

##### D. INDEPENDENT CONTRACTOR.

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

##### E. COMPLIANCE WITH LAW.

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

##### F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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



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#### **G. PROHIBITED TERMS.**

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

#### **H. SOFTWARE PIRACY PROHIBITION.**

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

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

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

#### **J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202 (1) and 24-30-202.4**

**C.R.S.**

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



## Exhibit B

### Nevada Sample Participating Addendum Terms and Conditions

1. **PARTICIPATION.** The benefits of this contract shall be extended to the governmental entities in Nevada listed below. The State is not liable for the obligations of any non-executive branch government entity which joins or uses this or any contract resulting from this contract.
  - 1.1. STATE EXECUTIVE BRANCH AGENCIES. All state "Using Agencies", as defined by NRS 333.020(10), are authorized users of the contract in accordance with NRS 333.150.
  - 1.2. LEGISLATIVE, AND JUDICIAL DEPARTMENTS AND CIVIL AIR PATROL. Any agency, bureau, commission or officer of the Legislative Department or the Judicial Department of the Nevada State Government or the Nevada Wing of the Civil Air Patrol or any squadron thereof are authorized users of this contract in accordance with NRS 333.469.
  - 1.3. NEVADA SYSTEM OF HIGHER EDUCATION, LOCAL GOVERNMENTS AND DISTRICTS. The Nevada System of Higher Education, local governments as defined in NRS 354.474, conservation districts and irrigation districts in the State of Nevada are authorized users of this contract in accordance with NRS 333.470.
2. **ADMINISTRATIVE FEE**
  - 2.1. Contractor shall pay a quarterly administrative fee payable to "State of Nevada Purchasing Division." Administrative fee is one percent (1%) and applies to all sales and other revenue, less merchant and interchange fees and adjusted for credits or refunds, by Contractor and any resellers, distributors, partners, or agents under the contract during a quarter, beginning the date of execution of this contract.
  - 2.2. All administrative fee payments shall include the contract number on required documents. If submitting an administrative fee payment for more than one contract, a separate payment and associated documents shall be submitted by Contractor for each contract.
  - 2.3. The State will not issue an invoice for administrative fee owed to the State. Contractor is responsible for payment of administrative fee with no prompting from the State. Contractor shall pay quarterly administrative fee within forty-five (45) calendar days of quarter end in accordance with *Fee Payment and Report Schedule*.
  - 2.4. STATEWIDE CONTRACT QUARTERLY ADMINISTRATIVE FEE REPORT
    - 2.4.1 Contractor shall complete and submit a Statewide Contract Quarterly Administrative Fee Report. The report shall identify payments received by Contractor from authorized entities made pursuant to the contract in the reporting period.
    - 2.4.2 The template for required Statewide Contract Quarterly Administrative Fee Report is available on the Purchasing Division website <http://purchasing.nv.gov/vendors/DBINV/>. Reports must be submitted via email to [NVQtlyReport@admin.nv.gov](mailto:NVQtlyReport@admin.nv.gov) in accordance with *Fee Payment and Report Schedule*.
  - 2.5. STATEWIDE CONTRACT QUARTERLY USAGE REPORT
    - 2.5.1 Contractor shall complete and submit a Statewide Contract Quarterly Usage Report, to include at a minimum itemized data elements listed below.
    - 2.5.2 The template for required Statewide Contract Quarterly Usage Report is available via a link on the Statewide Contract Quarterly Administrative Fee Report which is available on the Purchasing Division website <http://purchasing.nv.gov/vendors/DBINV/>. Reports must be submitted via email to [NVQtlyReport@admin.nv.gov](mailto:NVQtlyReport@admin.nv.gov) in accordance with *Fee Payment and Report Schedule*.
    - 2.5.3 Data Elements
      - A. Customer Name. Name of entity making the purchase—if customer has multiple locations, please use primary entity name.
      - B. Customer Type. Indicate type of entity making the purchase.

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1. S=State Executive Branch Agency
2. E=University and Community College
3. P=Political Subdivision
4. O=Other Entity
- C. Authorization Number. Purchase Order Number provided by customer to authorize a purchase. If purchase was made with a credit card enter "P-Card."
- D. Purchase Description. Description of the product(s) or service(s) purchased.
- E. Quantity. Quantities (excluding returns) of product(s) delivered—enter a quantity of one (1) for service(s).
- F. Unit Price. Unit price charged (excluding credits) for product or service purchased.
- G. Total Cost. Extended cost of purchase line—quantity delivered x unit price charged.

- 2.6. **FEE PAYMENT AND REPORT SCHEDULE.** Contractor shall pay administrative fee quarterly, if owed, and submit a Statewide Contract Quarterly Administrative Fee Report and Statewide Contract Quarterly Usage Report, even if no payments are made in a quarter, in accordance with the following schedule.

| Period End .....  | Report Due  |
|-------------------|-------------|
| September 30..... | November 14 |
| December 31 ..... | February 14 |
| March 31 .....    | May 15      |
| June 30 .....     | August 14   |

- 2.7. **REPORT MODIFICATIONS.** The State reserves the right to modify requested format and contents of reports by providing thirty (30) calendar days written notice to Contractor. The State may unilaterally amend the contract, with  
(30) calendar days written notice to Contractor, to change timing for submission of reports. Contractor understands and agrees that if such an amendment is issued by the State, Contractor shall comply with all contract terms, as amended.

- 2.8. **TIMELY REPORTS AND FEES.** If an administrative fee is not paid and quarterly reports are not received within forty-five (45) calendar days of quarter end, then Contractor will be in material breach of this contract.

3. **ORDER OF PRECEDENCE.** This contract shall be the primary document for all Orders. An Order, Quote, Service, Agreement, or Purchase Order can dictate an order of precedence, but cannot supersede this contract.

4. **ORDERS.** Any Order placed by a governmental entity for a Product and/or Service available from this contract shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the contract unless the parties to the Order agree in writing that another contract or agreement applies to such Order. The cooperative contract number and/or state contract number must appear on every Quote/Purchase Order placed under this contract.

5. **REQUISITIONS.** Orders for Nevada State executive branch agencies as defined in *Participation* will be processed by and through the Nevada Purchasing Division and a purchase order issued. Invoices and all correspondence related to an individual order will reflect the shipping address, billing address, and number on the purchase order issued by the State. Other entities as defined in *Participation* can purchase directly and be billed by vendor. Orders placed and paid via credit card do not require a PO.

6. **SERVICES.** All professional services, excluding warranty and break/fix support, requested by Nevada State executive branch agencies as defined in *Participation* will require the execution of a Service Agreement per NRS 333, NAC 333 and SAM 0300. Other entities as defined in *Participation* can purchase professional services directly and be billed by vendor. Pursuant to NRS 333.480(2), Services requiring a contractor's license issued pursuant to chapter 624 of NRS are not authorized under this agreement.

7. **SUBCONTRACTORS.** All contractors, dealers, resellers, distributors, and partners as shown on the dedicated Contractor cooperative contract website are approved to provide sales and service support to participants of this agreement. Contractor's dealer participation will be in accordance with the terms and conditions set forth in the contract.

8. **BUSINESS LICENSE.** Pursuant to NRS 353.007 any contractor, dealer, reseller, distributor, partner, or person



performing work under this agreement must hold a State business license pursuant to chapter 76 of NRS unless exempted pursuant to NRS 76.100(7)(b).

**9. NEVADA LAW AND STATE INDEMNITY.** Pursuant to NRS 333.339 any contract that is entered into may not: (1) Require the filing of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state or nation; or (2) Require the State to indemnify another party against liability for damages.

**10. GOVERNING LAW.** This contract will be governed by the state laws of Nevada, without regard to conflicts of laws rules. Any litigation will be brought exclusively in a federal or state court located in Carson City, Nevada, and the Parties consent to the jurisdiction of the federal and state courts located therein, submit to the jurisdiction thereof and waive the right to change venue. The Parties further consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**11. FEDERAL LAWS AND AUTHORITIES**

**11.1. CERTIFICATION.** Any person who requests or receives a Federal contract, grant, loan, or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and shall not make, any payment prohibited by subsection (a) of 31 U.S.C. 1352.

**11.2. COMPLIANCE.** Federal laws and authorities with which the awarded vendor shall be required to comply, as applicable, are listed here but are not meant to be exhaustive. Awarded vendors are responsible for an awareness of, and compliance with, State and federal laws and regulations.

- 11.2.1 Archeological and Historic Preservation Act of 1974, PL 93-291
- 11.2.2 Clean Air Act, 42 U.S.C. 7506(c)
- 11.2.3 Endangered Species Act 16 U.S.C. 1531, ET seq.
- 11.2.4 Executive Order 11593, Protection and Enhancement of the Cultural Environment
- 11.2.5 Executive Order 11988, Floodplain Management
- 11.2.6 Executive Order 11990, Protection of Wetlands
- 11.2.7 Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
- 11.2.8 Fish and Wildlife Coordination Act, PL 85-624, as amended.
- 11.2.9 National Historic Preservation Act of 1966, PL 89-665, as amended.
- 11.2.10 Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.
- 11.2.11 Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.
- 11.2.12 Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans
- 11.2.13 Age Discrimination Act, PL 94-135
- 11.2.14 Civil Rights Act of 1964, PL 88-352
- 11.2.15 Section 13 of PL 92-500, Prohibition against sex discrimination under the Federal Water Pollution Control Act
- 11.2.16 Executive Order 11246, Equal Employment Opportunity
- 11.2.17 Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
- 11.2.18 Rehabilitation Act of 1973, PL 93, 112
- 11.2.19 Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
- 11.2.20 Executive Order 12549 – Debarment and Suspension
- 11.2.21 Davis-Bacon Act 40 U.S.C. 3141-3148
- 11.2.22 Contract Work Hours and Safety Standards Act 40 U.S.C. 3701-3708
- 11.2.23 Rights to Inventions Made Under a Contract or Agreement 37 CFR §401.2(a)
- 11.2.24 Byrd Anti-Lobbying Amendment 31 U.S.C. 1352
- 11.2.25 Americans With Disabilities Act of 1990, PL 101-336
- 11.2.26 Health Insurance Portability and Accountability Act of 1996, PL 104-191
- 11.2.27 Equal Pay Act of 1963, PL 88-38
- 11.2.28 Genetic Information Nondiscrimination Act, PL 110-233



## Exhibit C

### New Mexico Sample Participating Addendum Terms and Conditions

1. **Taxes:** The Contractor shall be reimbursed by the Participating State for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority.

**PLEASE NOTE: NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE PARTICIPATING STATE.** The payment of taxes for

any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

2. **Retainage:**

Reserved

3. **Performance Bond:**

Reserved

4. **Term:** THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE

NEW MEXICO STATE PURCHASING AGENT. This Agreement shall begin on the date approved by the New Mexico State Purchasing Agent and end on DATE. The Participating State reserves the right to renew the Participating Addendum on an annual basis by mutual Agreement not to exceed a total of 10 years in accordance with NMSA 1978 §13-1-150.

5. **Termination:**

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

- b) **Notice; Participating State Opportunity to Cure.**

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



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perform the Services contracted for, as determined by the Participating State; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the New Mexico State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

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

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

6. **Appropriations:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Participating State to the Contractor. The Participating State's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.
7. **Status of Contractor:** The Contractor and its agents and employees are independent contractors providing Goods and/or performing professional or general services for the Participating State and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
8. **Conflict of Interest; Governmental Conduct Act:**
- a) The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- b) The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
- (1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Participating State employee while such employee was or is employed by the Participating State and participating directly or indirectly in the Participating State's contracting process;
- (2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a



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public officer or employee of the Participating State; (ii) the Contractor is not a member of the family of a public officer or employee of the Participating State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Participating State, a member of the family of a public officer or employee of the Participating State, or a business in which a public officer or employee of the Participating State or the family of a public officer or employee of the Participating State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

- (3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Participating State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Participating State whose official act, while in the Participating State's employment, directly resulted in the Participating State's making this Agreement;
- (4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or

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

- (5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- (6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Participating State.

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

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

## **9. Amendment:**

- a) This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.
- b) If the Participating State proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the



termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **Merger:** This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.
11. **Penalties for violation of law:** The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.
12. **Equal Opportunity Compliance:** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
13. **Workers Compensation:** The Contractor agrees to comply with the Participating State's laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Participating State.
14. **Applicable Law:** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
15. **Records and Financial Audit:** The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Participating State, including the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The Participating State shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Participating State to recover excessive or illegal payments.
16. **Invalid Term or Condition:** If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
17. **Enforcement of Agreement:** A Party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with

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Products and Supplies for Correctional Facilities and Incarcerated Individuals.**



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that or any other provision. No waiver by a Party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

- 18. Non-Collusion:** In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Participating State.
- 19. Notices:** Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

**To the Participating State:**

|            |  |
|------------|--|
| Name:      |  |
| Address:   |  |
| Telephone: |  |
| Email:     |  |

**To the Contractor:**

|            |  |
|------------|--|
| Name:      |  |
| Address:   |  |
| Telephone: |  |
| Contact:   |  |
| Email:     |  |

- 20. Succession:** This Agreement shall extend to and be binding upon the successors and assigns of the Parties.
- 21. Headings:** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
- 22. Default/Breach:** In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Purchasing Entity and the State of New Mexico may procure the Goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Purchasing Entity and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.
- 23. Equitable Remedies:** Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Participating State irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Participating State, and the Contractor consents to the Participating State's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Participating State's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the Participating State may have under applicable law, including, but not limited to, monetary damages.
- 24. New Mexico Employees Health Coverage:**



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- a) If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Participating State exceed \$250,000.
  - b) Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Participating State.
  - c) Contractor agrees to advise all employees of the availability of Participating State's publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com/>.
25. **Indemnification:** The Contractor shall defend, indemnify and hold harmless the Purchasing Entity and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Participating State and the Risk Management Division of the New Mexico General Services Department by certified mail.
26. **Default and Force Majeure:** The Purchasing Entity reserves the right to cancel all or any part of any Orders placed under this Agreement without cost to the Purchasing Entity, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Participating State and/or the Purchasing Entity due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the Order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the Participating State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the Participating State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.
27. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Participating State.
28. **Subcontracting:** The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Participating State. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Participating State.



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29. **Inspection of Plant:** The Participating State may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.
30. **Commercial Warranty:** The Contractor agrees that the Goods and/or Services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such Goods and/or Services, and that the rights and remedies provided herein shall extend to the Participating State and are in addition to and do not limit any rights afforded to the Participating State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.
31. **Condition of Proposed Items:** Where Goods are a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified in the Participating Addendum.
32. **Release:** Final payment of the amounts due under this Agreement shall operate as a release of the Participating State, its officers and employees and Procuring Entity from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
33. **Confidentiality:** Any Confidential Information provided to the Contractor by the Participating State or, developed by the Contractor based on information provided by the Participating State in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Participating State. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Participating State within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Participating State will result in direct, special and incidental damages.
34. **Contractor Personnel:**
  - a) **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Participating State. Key personnel are those individuals considered by the Participating State to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

**[Insert Contractor Staff Name(s)]**

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

- 35. Incorporation by Reference and Precedence:** In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) this Participating Addendum; (2) the Master Lease Agreement, if applicable; and (3) the NASPO ValuePoint Master Agreement.
- 36. Inspection:** If this Agreement is for the purchase of Goods, final inspection and acceptance shall be made at Destination. Goods rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.
- 37. Inspection of Services:** If this Agreement is for the purchase of services, the following terms shall apply.
- a) Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
  - b) The Contractor shall provide and maintain an inspection system acceptable to the Participating State covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Participating State during the term of performance of this Agreement and for as long thereafter as the Agreement requires.
  - c) The Participating State has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The Participating State shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
  - d) If the Participating State performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
  - e) If any part of the services do not conform with the requirements of this Agreement, the Participating State may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the Participating State may:
    - (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
    - (2) reduce the Agreement price to reflect the reduced value of the services performed.
  - f) If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the Participating State may:
    - (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the Participating State that is directly related to the performance of such service; or
    - (2) terminate the Agreement for default.

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

- 38. Insurance:** If the Services contemplated under this Agreement will be performed on or in Participating State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.
- a) Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability:

\$100,000.

- b) Comprehensive general liability (including endorsements providing broad form property damage,

personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- (1) Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- (2) Property damage or combined single limit coverage: \$1,000,000.
- (3) Automobile liability (including non-owned automobile coverage): \$1,000,000.
- (4) Umbrella: \$1,000,000.
- c) Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

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

**40. Reporting:**

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

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

Contractor agrees to utilize the New Mexico Quarterly Sales report provided by State Purchasing Division. The sales report shall include the gross total sales and other revenues including commissions charged for the period subtotaled by Procuring Agency or local public body name. Even if the Contractor experiences zero sales during the quarter, a report shall still be submitted. Detailed instructions can be found on page one of the excel Quarterly Sales Report.

Reports must be submitted via email to:

[GSD.QuarterlyUsageR@gsd.nm.gov](mailto:GSD.QuarterlyUsageR@gsd.nm.gov)

New Mexico State Purchasing Division Quarterly Sales Report- template can be located at:

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

A list of New Mexico State Agencies can be

located at: <https://www.nm.gov/departments-and-agencies/>

**41. Fees:**

The Contractor agrees to remit an administrative reporting fee payable by check to the New Mexico State Purchasing Division for an amount equal to **one percent (1.00 %)** of the total sales and other revenues derived from the New Mexico State Agencies and local public bodies. The Contractor shall indicate the contract number ##### on the quarterly sales report and remit payment, no later than thirty days following the end of each quarter. State Purchasing Division only accepts check payments.

**Payments must be submitted via U.S. mail to:**

New Mexico State Purchasing Division  
Attention: Compliance  
P.O. Box 6850  
Santa Fe, New Mexico 87502

**42. Lease Agreements:**

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

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

**Certificate Of Completion**

Envelope Id: 945773BADA614FFAB3D49CD1639FF68F

Status: Completed Subject: ITP

Products & Supplies for Correctional Facilities & Incarcerated Indvls

Source Envelope:

Document Pages: 10

Signatures: 1

Envelope Originator:

Certificate Pages: 5

Initials: 0

Arrianna Romero

AutoNav: Enabled

1100 S Saint Francis

EnvelopeId Stamping: Enabled

Dr Santa Fe, NM

Time Zone: (UTC-07:00) Mountain Time (US & Canada)

87502

Arrianna.Romero1@gsd.

nm.gov IP Address:

164.64.62.10

**Record Tracking**

Status: Original

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Location: DocuSign

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Pool: General Services Department

Location: DocuSign

**Signer Events****Signature****Timestamp**

Dorothy Mendonca

dorothy.mendonca@gsd

.nm.gov

SPD Division Director / State

Purchasing Agent General Services

Department

Signing Group: 35000 - State

Purchasing Agent

Security Level: Email, Account

Authentication (None)

*Dorothy Mendonca*

Signature Adoption: Pre-selected Style

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Sent: 8/28/2024

1:43:01 PM Resent:

8/28/2024 2:24:44 PM

Viewed: 8/28/2024

2:26:48 PM Signed:

8/28/2024 2:26:51 PM

**Electronic Record and Signature****Disclosure:**

Accepted: 4/14/2023 7:24:59 AM

ID: 51f6380f-50f7-4227-afb5-

572b373dfb7c

| In Person Signer Events      | Signature        | Timestamp            |
|------------------------------|------------------|----------------------|
| Editor Delivery Events       | Status           | Timestamp            |
| Agent Delivery Events        | Status           | Timestamp            |
| Intermediary Delivery Events | Status           | Timestamp            |
| Certified Delivery Events    | Status           | Timestamp            |
| Carbon Copy Events           | Status           | Timestamp            |
| Witness Events               | Signature        | Timestamp            |
| Notary Events                | Signature        | Timestamp            |
| Envelope Summary Events      | Status           | Timestamps           |
| Envelope Sent                | Hashed/Encrypted | 8/28/2024 1:43:01 PM |
| Envelope Updated             | Security Checked | 8/28/2024 2:24:43 PM |
| Envelope Updated             | Security Checked | 8/28/2024 2:24:43 PM |
| Envelope Updated             | Security Checked | 8/28/2024 2:24:43 PM |
| Certified Delivered          | Security Checked | 8/28/2024 2:26:48 PM |
| Signing Complete             | Security Checked | 8/28/2024 2:26:51 PM |
| Completed                    | Security Checked | 8/28/2024 2:26:51 PM |
| Payment Events               | Status           | Timestamps           |

#### Electronic Record and Signature Disclosure

## ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

### A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

### B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or

made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

## **C. Withdrawing your consent**

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

## **D. Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

## **E. All notices and disclosures will be sent to you electronically**

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below.

Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

## **F. How to contact GSD:**

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at:  
[GSD.SPDinfo@state.nm.us](mailto:GSD.SPDinfo@state.nm.us)

## **G. To advise SPD of your new email address**

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at [GSD.SPDinfo@state.nm.us](mailto:GSD.SPDinfo@state.nm.us) and in the body of such request you must include your previous and new email addresses.

## **H. To request paper copies from SPD**

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at [GSD.SPDinfo@state.nm.us](mailto:GSD.SPDinfo@state.nm.us) and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

## **I. To withdraw your consent with SPD**

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

- (1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:
- (2) Send SPD an email to [GSD.SPDinfo@state.nm.us](mailto:GSD.SPDinfo@state.nm.us) and in the body of your request state your email address, full name, mailing address, and telephone number.

## **J. Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:  
<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

## **K. Acknowledging your access and consent to receive and sign documents electronically**

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

## **Exhibit D**

### **Rhode Island Sample Participating Addendum Terms and Conditions**

#### **State of Rhode Island Additional Requirements**

##### **Insurance Requirements**

Pursuant to Section 13.19 of the State of Rhode Island General Conditions of Purchase, participating vendors shall provide to the Division of Purchases certificates of insurance coverage in the appropriate categories and amounts reflecting the State of Rhode Island as additional insured.

##### **Master Price Agreements - Contract Administrative Fee**

In 2017 the General Assembly amended the "State Purchases Act", R. I. Gen. Laws § 37-2-12 (b) to authorize the Chief Purchasing Officer to establish, charge and collect from vendors listed on master price agreements ("MPA") a contract administrative fee not to exceed one percent (1%) of the total value of the annual spend against their MPA contracts. All contract administrative fees collected from MPA vendors shall be deposited into a restricted receipt account which shall be used for the purposes of implementing and maintaining an online eProcurement system and other costs related to State procurement. In accordance with this legislative initiative the Division of Purchases is upgrading the State procurement system through the purchase and installation of an eProcurement system. The contract administrative fee shall be applicable to all purchase orders issued relative to State MPA contracts. Therefore, effective January 1, 2020 all MPA contracts shall be assessed the 1% contract administrative fee.

##### **State of Rhode Island General Conditions of Purchase**

Provided below as attachment

##### **MBE and EEO Requirements**

Provided below as attachment

## 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 RI. 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, RI. 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 RI. 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 RI. 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.

### **13.1 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.

## **13.16Unused 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.

## **13.17Confidentiality**

### **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 RI. 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 RI. 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 (AIAAgreements)
  - 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**

**CHAPTER30-PURCHASES SUBCHAPTER 00**

**- N/A**

PART 13 - GENERAL CONDITIONS OF PURCHASE (220-RICR-30-00-13)

Type of Filing: Adoption

**Agency Signature**

Agency Head Signature

Agency Signing Date

**Department of State**

Regulation Effective Date

Department of State Initials

Department of State Date

### Minority Business Enterprises

The Division of Purchases reserves the right to give additional consideration to quote proposals submitted by minority/women business enterprises certified by the Office of Diversity, Equity and Opportunity, Minority Business Enterprise Compliance Office ("MBEs") provided that any such quote proposal is fully responsive to the terms and conditions of the solicitation issued pursuant to this State Master Price Agreement Contract, and the bid price is determined, in the discretion of the Division of Purchases, to be within a competitive range.

Any bidder who does not intend to perform all of the work with its own forces shall recruit and engage MBEs to perform at least 10% of the dollar value of the contract awarded pursuant to this solicitation. To reach that goal, the bidder may allocate up to 60% of its cost for materials and supplies obtained from certified MBE suppliers, or 100% of its costs for materials and supplies obtained from certified MBE manufacturers.

The successful bidder must submit an MBE Utilization Plan to meet this requirement for approval by the Office of Diversity, Equity and Opportunity, Minority Business Enterprise Office with five (5) days of the tentative letter of award, identifying all MBEs, and must also demonstrate its good faith best efforts to meet these MBE goals. Information about this requirement and a directory of MBEs certified in Rhode Island is available at <http://odeo.ri.gov/offices/mbeco/mbe-wbe.php> or by calling (401) 574-8670. Equal Opportunity

By submission of proposals in response to this solicitation vendors agree to comply with R. I. General Laws § 28-5.1-10 which mandates that contractors/subcontractors doing business with the State of Rhode Island exercise the same commitment to equal opportunity as prevails under Federal contracts controlled by Federal Executive Orders 11246, 11625 and 11375.

Vendors are required to ensure that they, and any subcontractors awarded a subcontract under the RFR, undertake or continue programs to ensure that minority group members, women, and persons with disabilities are afforded equal employment opportunities without discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. Vendors and subcontractors who do more than \$10,000 in government business in one year are prohibited from engaging in employment discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability, and are required to submit an "Affirmative Action Policy Statement." Vendors with 50 or more employees and \$50,000 or more in government contracts must prepare a written "Affirmative Action Plan" prior to issuance of a purchase order.

- a. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.
- b. Vendors further agree, where applicable, to complete the "Contract Compliance Report" (<http://odeo.ri.gov/documents/odeo-eeo-contract-compliancereport.pdf>), as well as the "Certificate of Compliance" (<http://odeo.ri.gov/documents/odeo-eeo-certificate-of-compliance.pdf>), and submit both documents, along with their Affirmative Action Plan or an Affirmative Action Policy Statement, prior to issuance of a purchase order. For public works projects vendors and all subcontractors must submit a "Monthly Utilization Report" (<http://odeo.ri.gov/documents/monthly-employmentutilization-report-form.xlsx>) to the

**Request for Proposals for**  
**Products and Supplies for Correctional Facilities and Incarcerated Individuals.**

Issued by the **State of South Carolina**  
**Solicitation Number 5400027173**

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ODEO/State Equal Opportunity Office, which identifies the workforce actually utilized on the project.  
For further information, contact Vilma Peguero at the Rhode Island Equal Employment Opportunity Office,  
at 222-3090 or via e-mail at [ODEO.EOO@doa.ri.gov](mailto:ODEO.EOO@doa.ri.gov).



## Exhibit E

### South Carolina Sample Participating Addendum Terms and Conditions

Master Agreement #: XXXXX

Contractor: **XXXXXXXXXX**

Participating Entity: **STATE OF SOUTH CAROLINA**

Contract Number: **44000XXXXX**

The following products or services are included in this contract portfolio:

*Small Packages Delivery Services*

The following products or services are not included in this agreement:

*Any item available on this contract that is already available on an existing South Carolina State Term Contract.*

*· Leasing or Alternative Financing Methods.*

### Master Agreement Terms and Conditions:

1. Scope: This addendum covers the XXXXXXXXXXXX procurement led by the State of XXXXXX for use by state agencies and other entities located in the Participating State of South Carolina authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of South Carolina. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Pursuant to Section 11-35-4810, South Carolina public procurement units, both state and local (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) are authorized to participate in cooperative purchasing.

Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Agreement, including this addendum.



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

Contractor

|            |  |
|------------|--|
| Name:      |  |
| Telephone: |  |
| Email:     |  |

Participating Entity

|            |                                          |
|------------|------------------------------------------|
| Name:      |                                          |
| Address:   | 1201 Main St, Ste 600, Columbia SC 29201 |
| Telephone: |                                          |
| Email:     |                                          |

**PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity. The following changes are modifying or supplementing the Master Agreement terms and conditions:

4. Definitions:

“Authorized Agent” All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (S.C. Code Ann. § 11-35-2015)

“Authority” means the South Carolina State Fiscal Accountability Authority. (S.C. Code Ann. § 11-35-310(2))

“Procurement Officer” means the person, or his successor, identified as such in this Participating Addendum. (S.C. Code Ann. § 11-35-310(26))

“SC Participant(s)” means all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).



"State" means the State of South Carolina and its Using Governmental Units. (S.C. Code Ann. § 11-35-310(34))

"You and Your" means contractor.

"Using Governmental Unit" means all South Carolina Public Procurement Units [11-35-4610(5)] eligible to purchase under this contract.

5. Authority as Procurement Agent: The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. (S.C. Code Ann. § 11-35-2015)
6. South Carolina Prompt Payment Statute: The obligations of any SC Participant are governed by Section 11-35-45 of the South Carolina Code of Laws, if the participant is a "governmental body," as that term is defined in Section 11-35-310(18).
7. SC Registered Distributor: Vendor agrees to distribute its products to South Carolina public procurement units through vendors registered with the South Carolina Secretary of State as an authorized South Carolina vendor when available <http://www.scbos.sc.gov>. (S.C. Code Ann. § 11-35-4810(4))
8. Open Trade: During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.
9. Choice of Law: This PA is established as a term contract (as defined in Section 11-35-310(37)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(37). See clause entitled "Acceptance of Offers 10% Below Price." Use by local public procurement units is optional. Section 11-35-4610(3) defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(24) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts.

The contract, any dispute, claim, or controversy relating to the contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. (S.C. Code Ann. § 11-35-2050)



10. Statewide Term Contract - Acceptance Of Offers 10% Below Price: Pursuant to Section 11-35-310(35), the state may purchase items available on this contract from a third party (an "alternate vendor") if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor's price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the form found at this link:  
<https://procurement.sc.gov/files/PurchaseOrderTenPercentFormApr2015.docx> .
11. Choice-of-Forum. All disputes, claims, or controversies relating to the contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided in the contract or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
12. No Indemnity or Defense: Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. (S.C. Code Ann. § 11-35-2050)
13. EFT Information: The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). Additional information is available at the STO's website at <https://treasurer.sc.gov> (.). The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document. (S.C. Code Ann. § 11-35-45(c))
14. Payment & Interest:  
(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled "EFT Information." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except



as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

15. Drug Free Work Place Certification: Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.
16. Code of Conduct: When the Contractor is working under provisions of this contract at facilities controlled by State agencies or other UGUs, Contractor agrees to follow and enforce the Code of Conduct Policy of these entities.
17. Publicity: Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.
18. CISG: The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.
19. Statewide Term Contract – Contract Limitations: No sales may be made pursuant to this contract for any item or service that is not expressly included in the Scope. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.
20. Relationship of Using Governmental Units: Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act.
21. Item Substitution: No Substitutes will be allowed on Purchase Orders received from South Carolina procurement units without written permission from the issuing procurement unit.
22. Administrative Fee: (a) Procurement Services (PS) establishes and maintains master State contracts for the benefit of all South Carolina state and local public entities. These contracts allow



all public entities both to maximize the State's purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. Procurement Services' cost for this central purchasing activity is offset by an administrative fee which each contractor includes in its contract pricing (though not separately itemized or invoiced) and is paid to the vendor by each participating public entity. The contractor collects the fee as a fiduciary for the State and remits the same as calculated in accordance with the clause titled "ADMINISTRATIVE SERVICES FEE - CALCULATION." The price stated in the contractor's bid or proposal must include all amounts necessary for contractor to meet this obligation.

(b) As used in this clause, the term "reporting period" means each full calendar quarter (Jan. - Mar., Apr. - Jun., Jul. - Sep., and Oct. - Dec.) and any remaining periods less than a full calendar quarter during the term of this contract. For each reporting period, contractor shall report to PS its total sales pursuant to this contract for the period and shall remit the fee to the PS Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April 30). If the amount due for a reporting period is less than \$10.00, no payment is required. The procurement officer will provide contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. You may contact the Reports Manager at:

Procurement Services Division  
Attn: Reports Manager  
1201 Main Street, Suite 600  
Columbia, SC 29201  
Phone: (803) 737-1254 (ask to speak to the Reports Manager)

***Failure to receive the information packet does not relieve contractor from its obligations hereunder.***

(c) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: contractor's name, contract number, contract description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number of units (if practicable), and the number, date, and amount of contractor's check to PS. Unless otherwise specified by the reports manager, the usage report shall be submitted electronically according to instructions in the information packet. If the reports manager requires the contractor to provide a more detailed usage report, the reports manager will work directly with the contractor to determine the appropriate content and format of the report.

(d) During the term of this contract and for a period of three years thereafter, PS or its authorized representatives shall be afforded access at reasonable times to contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this



contract. If the audit indicates that contractor has materially underpaid PS, then contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (e)) and reimburse PS for all costs of the audit.

(e) Payments of the fee which are due and unpaid by the contractor (including amounts disclosed by audit) shall accrue interest as provided in the Payment and Interest clause for amounts due to the State. In addition to the fee and interest, contractor agrees to pay to PS its reasonable expenses of collection, including costs and attorneys' fees (and fees for inside counsel), whether or not PS commences legal action.

(f) If the contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

(1) direct the contractor to not accept any further orders under the contract until PS determines that the cause for such direction has been eliminated;

(2) terminate this contract;

(3) direct the contractor to not accept any further orders under any other master State contract established by PS until PS determines that the cause for such direction has been eliminated.

(g) For purposes of this clause, PS is intended as a third-party beneficiary of this contract. Reports MUST reference the SC Participating number 44000xxxxx to assure accurate accounting of purchases under this contract and reported administrative fees. Each remittance will include the period covered and the contract number. (S.C. Code Ann. § 11-35-4860(5))

**23. Administrative Fee – Calculation:** For each reporting period, Contractor shall pay to Procurement Services a fee equal to one and one quarter (1.25%) percent of the total dollar amount of purchases made by any public procurement unit from Contractor pursuant to this contract (excluding sales taxes and adjusted for credits or refunds). (S.C. Code Ann. § 11-35-4860(5))

**24. Taxes:** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure



or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. (S.C. Code Ann. Title 12, Chapter 36)

25. Subcontractors: All contractors, dealers, and resellers authorized in the State of South Carolina 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.
26. 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.
27. Term of Contract: The initial term of this contract will begin on the final execution date of this Participating Addendum. The initial term will end at the end of the then current term of the Master Agreement at the time the Participating Addendum is executed. At the end of the initial term, and at the end of each renewal term, this contract shall renew for a period of one (1) year. Regardless, this contract expires no later than the expiration date of the NASPO ValuePoint Master Agreement. (S.C. Code Ann. § 11-35-2030)
28. Insurance:
- (a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.
- (b) Coverage shall be at least as broad as:
- (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
- (2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- (3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.



- (c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. (d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
- (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.
- (f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.
- (g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
- (h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- (i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



## Exhibit F Utah Sample Participating Addendum Terms and Conditions

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

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

**1. DEFINITIONS:** The following terms shall have the meanings set forth below:

- a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
- b) "**Contract**" means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
- c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor sign.
- d) "**Contractor**" means the individual or entity delivering the Goods identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
- e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
- f) "**Division**" means the State of Utah Division of Purchasing.
- g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
- i) "**Goods**" means all types of tangible personal property (commodities), including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract. To the extent this Contract entails delivery or performance of services (including maintenance, installation, or product support), such services will be deemed "Goods" within the meaning of the Utah Uniform Commercial Code when reasonable to do so.
- j) "**Proposal**" means Contractor's response to the Division's Solicitation.
- k) "**Solicitation**" means the documents used by the Division to obtain Contractor's Proposal.
- l) "**State of Utah**" means the State of Utah, in its entirety, including its departments, institutions, agencies, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- m) "**Subcontractors**" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
- n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately

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preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
  1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the Division, Eligible Users, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that



prohibit the discrimination of any kind by any of Contractor's employees.

10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

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

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

If a written notice is delivered, the Eligible User will reimburse Contractor for the Goods properly ordered until the effective date of said notice. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SALES TAX EXEMPTION:** The Goods under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
15. **WARRANTY:** Contractor warrants, represents and conveys full ownership, and clear title, free of all liens and encumbrances to the Goods delivered to the Eligible Users under this Contract. Contractor warrants for a period of one (1) year that: (i) the Goods perform according to all specific claims that Contractor made in its Proposal to the Solicitation; (ii) the Goods are suitable for the ordinary purposes for which such Goods are used; (iii) the Goods are suitable for any special purposes identified in the Proposal and the Solicitation; (iv) the Goods are designed and manufactured in a commercially reasonable manner; (v) the Goods are manufactured and in all other respects create no harm to persons or property; and (vi) the Goods are free of defects. Unless otherwise specified in the Contract, all Goods provided shall be new and unused of the latest model or design.

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

16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
  - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor

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employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

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

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

17. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
18. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions, and prices of this Contract.
19. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
20. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
21. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
22. **DELIVERY:** Time is of the essence for all deliveries made under this Contract. All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Eligible User, except as to latent defects, fraud, or Contractor's warranty obligations. Contractor's failure to provide the Goods by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping the Goods.
23. **REPORTS AND FEES:**
  1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the

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- Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.

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

| <u>Period End</u> | <u>Reports Due</u> |
|-------------------|--------------------|
| March 31          | April 30           |
| June 30           | July 31            |
| September 30      | October 31         |
| December 31       | January 31         |

4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
24. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
25. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Goods to perform an inspection of the Goods to determine whether the Goods conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Goods by the Eligible User.
- If Contractor delivers nonconforming Goods, the Eligible User may, at its option and at Contractor's expense: (i) return the Goods for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Goods; or (iii) obtain replacement Goods from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Goods without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Goods. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
26. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Goods to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
27. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Goods shall not be deemed an acceptance of the Goods and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
28. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability such limitations of liability will not apply to this section.
29. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise



agreed upon by the parties in writing. All Goods, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract, shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.

30. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
1. Contractor has received payment for the Custom Deliverables,
  2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
  3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
  4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

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

31. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
32. **REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The Division may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division or the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Goods that do not conform to this Contract.
33. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.

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

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

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

35. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be done in writing.
36. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
37. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
38. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
39. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
40. **LOCAL WAREHOUSE AND DISTRIBUTION:** If required under the Solicitation, Contractor will maintain a reasonable amount of stock warehoused in the State of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice.
41. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
42. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
43. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate

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upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

44. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Goods.
45. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this **Contract**, which shall remain in full force and effect.
46. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
47. **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)



## 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.

### **SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.**

#### (1) Right to Protest.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract pursuant to Section 11-35-1560 or Section 11-35-1570 shall notify the appropriate chief procurement officer in writing of its intent to protest within five business days of the date that award or notification of intent to award, whichever is earlier, is posted in accordance with this code. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of such a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

(2) Protest Procedure. A protest pursuant to subsection (1) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

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(3) **Duty and Authority to Attempt to Settle Protests.** Before commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer has the authority to approve any settlement reached by mutual agreement.

(4) **Administrative Review and Decision.** If in the opinion of the appropriate chief procurement officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the appropriate chief procurement officer shall conduct promptly an administrative review. The appropriate chief procurement officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

(5) **Notice of Decision.** A copy of the decision under subsection (4) along with a statement of appeal rights pursuant to Section 11-35-4210(6) must be mailed or otherwise furnished immediately to the protestant and other party intervening. The appropriate chief procurement officer, or his designee, also shall post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and the posted decision must indicate the date of posting on its face and must be accompanied by a statement of the right to appeal provided in Section 11-35-4210(6).

(6) **Finality of Decision.** A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

(7) **Automatic Stay of Procurement During Protests.** In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the interest of the State.

(8) **Notice of Chief Procurement Officer Address.** Notice of the address of the appropriate chief procurement officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation.



## 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

Complete the Cover Page and Page 2 and submit with your offer.

#### 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.



- ☐ 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.

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**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 H  
OFFEROR RESPONSE WORKSHEET

Offeror must offer complete and succinct responses to each item below. Insert your responses into this worksheet directly beside each question or prompt. While supplementary marketing materials are neither requested nor desired, Offeror should provide all information necessary to demonstrate Offeror's ability to meet the requirements of this RFP and the RFP's Scope of Work.

| VENDOR RESPONSE REQUIRED                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                             | Max Points Available |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------|
| I. Response to Technical Criteria (STAGE 2)                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                             | 200                  |
| A. Experience and Qualifications                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                             | 300                  |
| 1. Provide a brief history of your company. Describe your experience providing products and supplies with similar deliverables to public correctional institutions at the state and/or local level.                                                                                                                                                                                                                                                          |                                                                                                             |                      |
| 2. Provide evidence of your customers' satisfaction with your offered products and supplies.<br>(a) Describe your overall client retention rate during the past three (3) years.<br>(b) Describe the results of all customer surveys your firm uses to assess client satisfaction. These could be internal or external.<br>(c) Describe all Vendor performance ratings your firm has been assessed by a 3rd party, or ratings internal to your organization. | If a supplier releases a survey, indicate how many customers got the survey versus how many responded to it |                      |
| 3. Describe your firm's growth during the past three (3) years.                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                             |                      |
| B. Scope of Work                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                             |                      |
| 1. Describe your plan for meeting the Master Agreement Objectives identified in Attachment B, Scope of Work. <i>It is strongly encouraged that responses to this question follow the outline of the scope of work and address each item.</i>                                                                                                                                                                                                                 |                                                                                                             |                      |
| 2. Describe your ability to support a decentralized system of orders submitted from many end users in multiple states and locations.                                                                                                                                                                                                                                                                                                                         |                                                                                                             |                      |
| 3. Describe your ability to provide products and services immediately upon execution of a Master Agreement and Participating Addenda.                                                                                                                                                                                                                                                                                                                        |                                                                                                             |                      |
| 4. Describe the ordering system website and how it will enhance the customer experience (e.g. search features; ordering; billing; account updates; customer-specific ordering history; inventory assistance; FAQ's; webinars; trouble-shooting; etc.). Provide sample screenshots of existing websites created for other customers as necessary. (Offeror can submit additional attachments for the purpose of responding to this question).                 |                                                                                                             |                      |
| 5. Describe your plan to meet contractor responsibilities and task identified in the Scope of Work                                                                                                                                                                                                                                                                                                                                                           |                                                                                                             |                      |
| C. Customer Service                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                             | 100                  |
| 1. What are your quality assurance measures and how are they handled in your organization?<br>(a) How does your company address inspection of products prior to shipment to the customer and how damaged/faulty products are addressed with the customer?<br>(b) Describe your return policy and process for items that are damaged or destroyed prior to acceptance by the customer?                                                                        |                                                                                                             |                      |
| 2. What is your process for restocking returned items? Is there a restocking fee? If so, please provide details.                                                                                                                                                                                                                                                                                                                                             |                                                                                                             |                      |
| 3. Describe your customer service offerings, including availability of key personnel and help desk services.                                                                                                                                                                                                                                                                                                                                                 |                                                                                                             |                      |
| 4. Describe any geographic concerns you may have. Do you have the ability to service all U.S. states and territories, including Alaska and Hawaii?                                                                                                                                                                                                                                                                                                           |                                                                                                             |                      |
| 5. Describe your company's distribution system/network and the ability to deliver product to all 50 states and territories.                                                                                                                                                                                                                                                                                                                                  |                                                                                                             |                      |
| D. Product Selection/Availability                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                             | 150                  |
| 1. It is desired that Offeror be able to offer products and supplies in multiple categories as well as offer volume discounts. Please describe how your company is offering a desired selection of products and how the volume discounts add value to the category in which it is offered                                                                                                                                                                    |                                                                                                             |                      |
| 2. Describe your company's policies in the event of a backorder or out-of-stock situation                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                             |                      |
| 3. Volume Discount for Minimum Order Quantity: Offeror is also invited to propose discounts for minimum order quantities. Ordering Entities may consolidate purchases to take advantage of any volume discount extended by Contractor for minimum orders, as long as a single delivery location is specified at the discretion of the Ordering Entity.                                                                                                       |                                                                                                             |                      |
| 4. Describe your quote, invoicing, and credit processes and how these meet the requirements of this RFP. Describe how your discounts will be shown on your quotes and invoices, please include how these discounts can be verified by the Ordering Entity. Describe the measures you have in place to ensure that any billing issues are resolved to the Ordering Entity's and the State's satisfaction in a timely manner.                                  |                                                                                                             |                      |
| III. Additional Questions                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                             | 50                   |
| A. Implementation and Promotion of the NASPO ValuePoint Master Agreement                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                             |                      |
| 1. Describe your company's experience working with contracting cooperatives.                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                             |                      |
| 2. List the cooperatives through which you currently have a contract, and provide general sales volume information for each. Identify any restrictions on pricing and sales (e.g., most-favored nation clauses) imposed by your other cooperative contracts.                                                                                                                                                                                                 |                                                                                                             |                      |
| 3. Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.                                                                                                                                                                                                                                                                                                  |                                                                                                             |                      |
| 4. Describe features of the dedicated website you will be setting up for this Master Agreement, including, as applicable, customized price lists for each Participating Entity, staff contact information, and online ordering capabilities.                                                                                                                                                                                                                 |                                                                                                             |                      |
| 5. Describe the staff and other resources that will be allocated to your Master Agreement and the training you will provide to staff to ensure their familiarity with Master Agreement terms and pricing and their compliance therewith.                                                                                                                                                                                                                     |                                                                                                             |                      |
| 6. Describe how you intend to encourage adoption and usage of your Master Agreement by Participating and Purchasing Entities.                                                                                                                                                                                                                                                                                                                                |                                                                                                             |                      |
| 7. Describe your approach to negotiation of Participating Addenda. Describe the extent to which you will provide Participating Entities flexibility in incorporating entity-specific language into their Participating Addenda. (e.g., Do you require entities to provide statutory citations for their entity-specific language? Are you able to devote resources to simultaneous negotiation of multiple Participating Addenda?)                           |                                                                                                             |                      |
| 8. Describe your ability to provide products and services immediately upon execution of a Master Agreement and Participating Addenda.                                                                                                                                                                                                                                                                                                                        |                                                                                                             |                      |
| 9. Describe how you will ensure summary and detailed sales information is promptly, completely, and accurately reported to you by your dealers, partners, and resellers for aggregation and reporting to NASPO ValuePoint in compliance with the terms of your Master Agreement.                                                                                                                                                                             |                                                                                                             |                      |



## Attachment J PROPOSED MODIFICATIONS TO SAMPLE MASTER AGREEMENT

The Lead State may, but is not obligated to, consider proposed modifications to Attachment [X], 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 [X], 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 [X], 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.

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- **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 [Lead State code/rule reference] shall be one of the following:
      - [The information is a trade secret, as defined in...];
      - [The information constitutes confidential business information, as defined in...];
      - [The information constitutes confidential customer information, as defined in...]; or
      - [The information includes private individual information, as defined in...].
    - **Explanation:** Explanation of how the information claimed to be confidential, proprietary, or protected meets the definition of one of the bases above.
  - 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.]

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**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:**

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**Signature**

---

**Date**

---

**Printed Name**

---

**Title**

---

**Email Address**

---

**Phone Number**

**Attachment L**  
**Products and Supplies for Correctional Institutions and Incarcerated Individuals - 5400027173**  
**Vendor Questions Template**

Using only this template, please submit all questions by email to the RFP Contact Michael Speakmon ([mspeakmon@mmo.sc.gov](mailto:mspeakmon@mmo.sc.gov)) on or before the date and time listed on Page 1 of the Solicitation. AT THE SOLE DISCRETION OF THE RFP CONTACT, LATE SUBMISSIONS MAY NOT BE ACCEPTED. The RFP Contact will notify your email sender of receipt and acceptance of questions. Do not assume the RFP Contact received your questions. The State will publicly post an Amendment listing relevant vendors' questions and answers if they materially impact the solicitation. Vendors are reminded that it is their responsibility to diligently check the Solicitations portal for all amendments and other updates to the Solicitation including all attachments, exhibits, and artifacts.

<https://apps.sceis.sc.gov/SCSolicitationWeb/solicitationSearch.do?searchgroup=MMO&searchstatus=O&searchlimit=500&btnSearch=on>

| Question | Solicitation attachment, page and section if relevant | Question |
|----------|-------------------------------------------------------|----------|
| 1.       |                                                       |          |
| 2.       |                                                       |          |
| 3.       |                                                       |          |
| 4.       |                                                       |          |
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| 9.       |                                                       |          |

| Question | Solicitation<br>attachment, page<br>and section if<br>relevant | Question |
|----------|----------------------------------------------------------------|----------|
| 10.      |                                                                |          |

**ATTACH ADDITIONAL SHEETS AS NEEDED.**