The State of Michigan
DTMB Central Purchasing

In conjunction with

Request for Proposals

Michigan Solicitation Number 210000000535

NASPO ValuePoint Master Agreement for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

January 4, 2023

About NASPO ValuePoint
NASPO ValuePoint is the cooperative purchasing division of the National Association of State Procurement Officials (NASPO), facilitating cooperative public procurement solicitations using a Lead State model.

About NASPO
The National Association of State Procurement Officials (NASPO) is a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States.

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RFP Administrative Information

RFP Title:	Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services
RFP Project Description: (See Section 1.1)	The State of Michigan, in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide truck bodies, turnkey trucks and all associated equipment and services needed to complete the requirements of this solicitation.
RFP Lead: (See Section 1.2)	Yvon Dufour DTMB Central Procurement 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 249-0455
Submit electronically via www.michigan.gov/SIGMAVSS: (See Section 2.10)	Electronic Submission www.michigan.gov/SIGMAVSS
Pre-Proposal Conference: Pre-Proposal Conference Location: (See Section 2.4)	**January 17, 2023 (Tuesday) 1:00 pm Eastern** Microsoft Teams Meeting – see Section 2.4 for Details
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	**February 6, 2023 (Tuesday), 3:00 pm Eastern**
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted via email to dufoury@michigan.gov. Questions must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.3)	**March 20, 2023 (Monday)**
RFP Closing Time: (See Section 1.3)	3:00 pm Eastern
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be three (3) years with the option, upon mutual written agreement, for two (2) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSAL
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

Solicitation # 210000000535

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Michigan (Lead State), Department of Technology, Management and Budget, Central Purchasing Division is requesting proposals for Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services in furtherance of NASPO Value Point's Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide truck bodies, seasonal maintenance equipment, & upfitting services for purchase and/or rental, parts, maintenance & repairs for Participating States.

Subject to the Lead State's sole discretion, this RFP may result in Master Agreement awards to a single, or multiple contractors.

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

This will be a new Master Agreement portfolio for the State of Michigan and NASPO ValuePoint.

1.2. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Michigan Department of Technology, Management and Budget, Central Purchasing Division is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is **Solicitation # 210000000535**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand

approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division is:

Yvon Dufour, Category Specialist
State of Michigan, DTMB, Central Purchasing Division
320 South Walnut
Elliott-Larsen Building, 2nd Floor N
Lansing, MI 48909
dufoury@michigan.gov
(517) 249-0455 Fax (517) 335-0046

1.3 Schedule of Events

Solicitation Release:	**January 4, 2023**
Pre-Proposal Conference:	**January 17, 2023 at 1:00 pm Eastern (13 days)**
Question Deadline:	**February 6, 2023 at 3:00 pm (20 days)**
Closing Date and Time:	**March 20, 2023 3:00 pm (42 days)**
Anticipated Award Date:	**June 12, 2023 (84 days)**

All times are Eastern time unless indicated otherwise.

1.4. Definitions

The following definitions apply to this solicitation. The NASPO ValuePoint Master Agreement terms and conditions (Attachment A) and the Lead State Terms and Michigan Participating Addendum (Attachment G) also contain definitions of terms used in this solicitation.

Bidder means the company or firm who submits a proposal in response to this Request for Proposal.

Contract Administrator The person who is the single point of contact for this RFP on behalf of the Lead State and NASPO.

Contractor For the purposes of this RFP, means the successful Bidder who is awarded a Contract for providing all equipment and services described in the Contract documents.

Distributer (Dealer) Agreement document that identifies a manufacturer's independent dealer for services provided within the scope of this RFP.

Lead State means the State conducting this cooperative procurement, evaluation, and award.

Master Agreement(s) means the underlying agreement executed by and between the

Lead State, acting in collaboration with the NASPO ValuePoint program, and the successful Contractor(s).

Offeror has the same meaning as Bidder.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating the Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions. The Lead State Terms and Conditions are also a Participating Addendum.

Proposer has the same meaning as Bidder.

Proposal means the official written response submitted by an Offeror in response to this Request for Proposal.

Request for Proposal or "RFP" means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

Supplier is any manufacturer, distributor, company, or any other entity providing units, components or subassemblies for inclusion in the final equipment item(s) described in the contract documents.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company dedicated to strengthening the procurement community through education, research, and communication. NASPO is made upof the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the 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. For more information consult the following websites: www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

The Lead State Terms and Conditions are located in Attachment F. In addition to the Lead State conducting this solicitation, states that have requested to be named in this RFP as potential users of the resulting Master Agreement are identified in Attachment G. This list neither guarantees participation by named states nor excludes participation by states or other entities that are not named. Participation will be determined on a state-by-state basis following execution of Master Agreement(s).

Some of the states listed in Attachment G may have included special or unique terms and conditions for their state that will govern their state's Participating Addendum in Attachment G. These terms and conditions are being provided as a courtesy to Proposers to indicate which additional terms and conditions may be incorporated into the state's Participating Addendum after award of the Master Agreement.

The Lead State will not address questions or concerns or negotiate any other Participating State's terms and conditions. The Participating States shall negotiate these terms and conditions directly with the Contractor. Any terms that may be contained in Attachment G are expressly excluded from incorporation into any resulting contract with the Lead State.

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Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1 Proposal Preparation

The Lead State recommends reading **all** RFP materials prior to preparing a proposal. Bidders must follow all instructions herein and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the Bidder's company name in the header of all documents submitted with your proposal.

RFP Structure and Documentation

Document	Description	Bidder Response Instructions
Executive Summary	Description of the Offeror's Proposal. Outlines major features of the Proposal. Should include requirements that cannot be met.	Bidder to complete and submit by proposal deadline
Request for Proposal	Provides RFP information and instructions to Bidders	Informational
Confidential Treatment Form	Required verification on whether Bidder's proposal contains confidential information	Bidder to complete and submit by proposal deadline
Vendor Questions	Questions to Bidders on	Bidder to complete and submit by

Document	Description	Bidder Response Instructions
Worksheet	background and experience	proposal deadline
Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions	Provides general NASPO ValuePoint legal terms and conditions for a contract awarded through this RFP which are applicable unless superseded by terms contained within an applicable Participating Addendum	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment B – Statement of Work	Statement of work	Bidder to complete and submit by proposal deadline
Attachment C – Pricing	Pricing for goods and services sought through this RFP	Bidder to complete and submit by proposal deadline
Attachment D – RFP Evaluation Scoresheet	Evaluation criteria	Informational
Attachment E – Distributer/Dealer Agreement	Used for Manufacturers Independent Dealers (If applicable)	Informational
Attachment F – Lead State Terms and Michigan Participating Addendum	Provides legal terms for a contract with the Lead State of Michigan, as awarded through this RFP	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment G– Participating States	Provides a list of States interested in executing a contract(s) with awarded Contractors	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Contract
Exhibit 1 to Attachment G – Participating States' Legal Terms	Provides legal terms that may apply to a contract awarded through this RFP by Participating States, other than the Lead State	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Master Agreement

2.2 RFP Question and Answer Process

Bidder questions about this RFP, including those about Terms and Conditions contained in Attachments A and G, must be emailed to the solicitation manager dufoury@michigan.gov no later than the time and date specified on the Cover Page. In the interest of transparency, only written questions are accepted.

The Lead State may refuse to answer questions received after the Question/Answer deadline.

Answers to questions will be posted on www.michigan.gov/SIGMAVSS. Submit questions using the format below; a Microsoft Excel format or similar is suggested.

Q #	Document and Section	Page #	Bidder Question

The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, so Offerors are cautioned about including context in questions that may reveal the source of questions.

2.3 RFP Modifications

Changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via written addenda issued by the Lead State.

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor www.michigan.gov/SIGMAVSS to obtain RFP addenda or other information relating to the RFP.

2.4 Pre-Proposal Conference (Optional)

A pre-proposal conference will be held on **January 17, 2023, at 1:00 pm Eastern**, remotely via **Microsoft Teams**:

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 213 076 352 872
Passcode: D3JYSb
Download Teams | Join on the web
Or call in (audio only)
+1 248-509-0316,,716891674# United States, Pontiac
Phone Conference ID: 716 891 674#
Find a local number | Reset PIN
Learn More | Meeting options

Attendance at the conference is optional. Statements made by the solicitation manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the solicitation manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document.

2.5 Proposal Due Date

Proposals must be received by the posted Closing date and time as described in the **Schedule of Events in Section 1.3** of this RFP. Proposals received after the deadline will be late and rejected.

2.6 Cancellation of Procurement

This RFP may be canceled at any time prior to award of the Master Agreement(s) if the Lead State determines, in its sole discretion, such action to be in the best interests of Participating States.

2.7 Governing Laws and Regulations

This procurement is conducted by the Lead State, Michigan, in accordance with the Michigan's Procurement Code, available at https://www.michigan.gov/documents/dmb/0510_182349_7.pdf

This procurement shall be governed by the regulations and laws of Michigan. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Michigan. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in **section 33** of the **NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.**

2.8 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date, after which time the Bidder will have the option to revoke any offers made through their response by providing written notice of revocation to the Lead State.

2.9 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the Lead State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. In the event that the Offeror so restricts its Proposal, the Lead State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the Lead State and the NASPO ValuePoint cooperative program. The Lead State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

2.10 Proposal Content and Format Requirements

Proposals must be detailed and concise. Most Proposal documents are provided in this RFP for the Proposers to complete and submit back to the Lead State **(See Bidder Response Checklist in this section, item 2.12 Required Format).** Each Proposal must be labeled and organized in a manner that is congruent with the requirements and

terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Statement of Work elements.

2.11 Proposal Submission Instructions

Electronic – The Bidder must submit its proposal, all attachments, and any modifications or withdrawals electronically through www.michigan.gov/SIGMAVSS. The price proposal should be saved separately from all other proposal documents. Attachment file size is limited to 6 MB per document. Bidder's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal**, as the SIGMA VSS system requires the creation of an account and entry of certain information, in addition to uploading and submitting the materials. The SIGMA VSS system **will not** allow a proposal to be submitted after the proposal deadline identified in the solicitation Closing On/Closing Date fields (Summary view/Detail view), even if a portion of the proposal has been uploaded.

Questions on how to submit information or how to navigate in the SIGMA VSS system can be answered by calling **(517) 284-0540 or (888) 734-9749**. The solicitation manager will not provide assistance related to the submittal of the proposal and all attachments on the day of the proposal deadline. Responsibility for a complete submission lies with the Bidder.

2.12 Required Format

The Bidder should submit all documents in the format indicated in the table below. Attachment file size is limited to 6 MB per document.

BIDDER RESPONSE CHECKLIST		
Document		**Bidder Response Instructions**
1.	**Executive Summary**	Submit as Microsoft Word or PDF document.
2.	**Confidential Treatment Form**	Submit as Microsoft Word document.
3.	**Vendor Questions Worksheet**	Submit as Microsoft Word document.
4.	**Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions**	Submit in redlined format only if not accepted as written. Microsoft Word document.
5.	**Attachment B – Statement of Work**	Submit as Microsoft Word document.
6.	**Attachment C – Pricing**	Submit as Microsoft Excel document.

7.	**Attachment F – Lead State Terms and Michigan Participating Addendum**	Submit in redlined format only if not accepted as written. Microsoft Word document.
8.	**Product Specifications**	Submit as Microsoft Word or PDF document.
9.	**Dealer list (if applicable)**	Submit as Microsoft Excel document.
10.	**Complete Price List (should include all products and all their options and attachments)**	Submit as Microsoft Excel document.
11.	**Certified letter from each participating manufacturer(s) (See Attachment B, section B1.6 Contractual Solutions if applicable)**	Submit as Microsoft Word or PDF document.

2.13 Ownership or Disposition of Proposals and other Materials submitted.

All proposals shall be stored and disposed of electronically according to the applicable State of Michigan policy regarding retention period requirements.

2.14 Confidential Treatment Form and The Freedom of Information Act

All portions of the Bidder's proposal and resulting contract are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231, et seq. However, some information may be exempt from disclosure. Under MCL 18.1261(13)(b), records containing "a trade secret as defined under section 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902," are exempt from disclosure under FOIA. In addition, "financial or proprietary information" submitted with a Bidder's proposal is exempt from disclosure under FOIA. A Bidder's failure to comply with this Section is grounds for rejecting a Bidder's proposal as non-responsive. As a part of its proposal, each Bidder must follow the procedure below.

Submit a Completed "Confidential Treatment Form" (CT Form) With Your Bid. Completion and submission of the CT Form is required regardless of whether the Bidder seeks confidential treatment of information. Failure to submit a completed CT Form may be cause for disqualification from the solicitation process.

i. Complete and sign Section 1 of the CT Form if the Bidder does NOT request confidential treatment of information contained in its proposal; or

ii. Complete and sign Section 2 of the CT Form if the Bidder requests confidential treatment of certain information. Bidder must also submit a "Public Copy" of the proposal with the trade secret, financial, and proprietary information redacted and clearly labeled as the "Public Copy."

FOIA Requests. If a FOIA request is made for a Bidder's proposal, the Public Copy may be distributed to the public along with the Bidder's CT Form. The CT Form is a public document and serves as an explanation for the redactions to the Public Copy. Do

not put any trade secret, financial, or proprietary information in the CT Form. Do not redact the CT Form itself.

No Advice. The Lead State will not advise a Bidder as to the nature or content of documents entitled to protection from disclosure under FOIA or other laws, as to the interpretation of such laws, or as to the definition of trade secret or financial or proprietary information. Nothing contained in this provision will modify or amend requirements and obligations imposed on the Lead State by FOIA or other applicable law.

Failure To Request Confidential Treatment. Failure to request material be treated as confidential as specified herein relieves the Lead State, its agencies, and personnel from any responsibility for maintaining material in confidence.

Bids containing a request to maintain an entire proposal as confidential may be rejected as non-responsive. Bidders may not request confidential treatment with respect to resumes, pricing, and marketing materials. The Lead State reserves the right to determine whether material designated as exempt by a Bidder falls under MCL 18.1261 or other applicable FOIA exemptions. If a FOIA request is made for materials that the Bidder has identified as trade secret, financial, or proprietary information, the Lead State has the final authority to determine whether the materials are exempt from disclosure under FOIA.

Bidder forever releases the Lead State, NASPO, its departments, subdivisions, officers, and employees from all claims, rights, actions, demands, damages, liabilities, expenses and fees, which arise out of or relate to the disclosure of all or a portion of Bidder's proposal submitted under this RFP. Bidder must defend, indemnify and hold the Lead State and NASPO as well as their departments, subdivisions, officers, and employees harmless, without limitation, from and against all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to any FOIA request, including potential litigation and appeals, related to the portion of Bidder's proposal submitted under this RFP that Bidder has identified as a trade secret, or financial or proprietary information. The Lead State will notify Bidder in writing if indemnification is sought. The Lead State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, or any portion thereof, if the Lead State deems necessary. Bidder will not, without the Lead State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. If a Lead State employee, official, or law is involved or challenged, the Lead State may control the defense of that portion of the claim. Any litigation activity on behalf of the Lead State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the Lead State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

2.15 Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to the Lead State Terms and Conditions included in **Attachment F**, and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its sourcing team), the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception and would require a substantial proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language, or any other document contained within this RFP through their written inquiries about the RFP using the process in **Section 2.2**.

Moreover, Offerors are cautioned that award may be made on receipt of initial proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated. Further, the nature of exceptions will be considered in the competitive range determination if one is conducted. In the sole discretion of the Lead State, exceptions may be evaluated to determine: the extent to which the alternative language or approach poses unreasonable, additional risk to the state; is judged to inhibit achieving the objectives of the RFP; or whose ambiguity makes evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP. Exceptions may result in a Proposal being rejected as nonresponsive and the Lead State is under no obligation to consider exceptions.

CONFIDENTIAL TREATMENT FORM

INSTRUCTIONS. Complete either *Section 1* or *Section 2* of this CT Form and sign where indicated. This CT Form must be signed by the individual who signed the Bidder's proposal. A completed CT Form must be submitted with your proposal, regardless of whether your proposal contains confidential information.

Failure to submit a completed CT Form with your bid is grounds for rejecting the proposal as non-responsive. See the **Confidential Treatment Form** and **The Freedom of Information Act** (FOIA) sections of the *Proposal Instructions* for additional information.

Section 1. CONFIDENTIAL TREATMENT IS NOT REQUESTED

This section must be completed, signed, and submitted with the proposal if the Bidder does **not** request confidential treatment of any material contained in the proposal.

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is not requested.

RFP Number	RFP Title
Signature	Date

Printed Name, Title, Company

CONFIDENTIAL TREATMENT FORM

Section 2. CONFIDENTIAL TREATMENT IS REQUESTED

This section must be completed, signed, and submitted with the proposal if Bidder requests confidential treatment of any material contained in the proposal. Submission of a completed CT Form is required to request confidential treatment.

Provide the information in the table below. Bidder may add rows or additional pages using the same format shown in the table. Bidder must specifically identify the information to be protected as confidential and state the reasons why protection is necessary.

The CT Form will not be considered fully complete unless, for each confidentiality request, the Bidder: (1) Identifies the Proposal Page #, Section #, and Paragraph #, (2) Identifies whether the material is a Trade Secret (TS), Proprietary Financial Information (FI), or Proprietary Information (PI), (3) Explains the specific legal grounds that support treatment of the material as TS, FI, or PI. Bidders must provide a complete justification as to how the material falls within the scope of an applicable FOIA Exemption or relevant case law. Bidders must not simply cite to an applicable exemption or case name, and (4) Provides the contact information for the person at Bidder's organization authorized to respond to inquiries by the State concerning the material.

(1) Proposal Page #, Section #, Paragraph #	(2) Material is Trade Secret (TS), Proprietary Financial Information (FI), Proprietary Information (PI)	(3) Applicable FOIA Exemption with Written Justification	(4) Bidder Contact Information

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is requested and has attached to this form a redacted "Public Copy" of the Bidder's proposal.

RFP Number

RFP Title

Signature

Date

Printed Name, Title, Company

Section 3: Evaluation and Award

3.1 Right to Waive Minor Irregularities

3.1.1 Notice of Deficiency. The Lead State reserves the right to issue a **Notice of Deficiency** to all active Bidders, if the State determines after the proposal deadline that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a **Notice of Deficiency** timely may be cause for disqualification.

3.1.2 Clarification Request. The Lead State reserves the right to issue a **Clarification Request** to an individual requesting Bidder by email to clarify its proposal if the Lead State determines the proposal is not clear. Failure to respond to a **Clarification Request** timely may be cause for disqualification.

3.1.3 Reservations. The Lead State reserves the right to:

- **a)** Disqualify a Bidder for failure to follow these instructions.
- **b)** Discontinue the RFP process or cancel the Solicitation entirely at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the Lead State's subsequent receipt and evaluation of your proposal does not commit the Lead State to award a contract to you or anyone, even if all the requirements in the RFP are met.
- **c)** Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the Lead State received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
- **d)** Consider an otherwise disqualified proposal if no other proposals are received.
- **e)** Disqualify a proposal based on: (i) information provided by the Bidder in response to this RFP; (2) the Bidder's failure to complete registration on www.michigan.gov/SIGMAVSS ; or (3) if it is determined that a Bidder purposely or willfully submitted false or misleading information in response to the RFP.
- **f)** Consider prior performance with the Lead State in making its award decision.
- **g)** Consider overall economic impact to the Lead State when evaluating proposal pricing and in the final award recommendation. This includes but is not limited to: considering principal place of performance, number of Lead State citizens employed or potentially employed, dollars paid to Lead State residents, Lead State capital investments, job creation, tax revenue implications, and economically disadvantaged businesses.
- **h)** Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award recommendation.
- **i)** Refuse to award a contract to any Bidder that has failed to pay Lead State taxes or has outstanding debt with the Lead State.

j) Enter into negotiations with one or more Bidders on price, terms, technical requirements, or other deliverables.

k) Award multiple, optional-use contracts, or award by Contract Activity.

l) Evaluate the proposal outside the scope identified in the Evaluation Process section of this document if the State receives only one proposal.

3.2 Discussions with Offerors – Oral Presentations

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The Lead State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

The Lead State may, but is not required to, conduct an on-site visit to tour and inspect the Bidder's facilities; require an oral presentation of the Bidder's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process.

3.3 Award of Master Agreement(s)

Award shall be made to the responsive and responsible Offeror(s) whose proposal is the most advantageous to Michigan and the NASPO ValuePoint cooperative program, taking into consideration price and the best combination of the factors stated in section **3.4 Evaluation Process**. This solicitation is intended to provide multiple contract awards in various categories. The Lead State will post an **Award Recommendation and Evaluation Synopsis** on www.michigan.gov/SIGMAVSS.

3.4 Evaluation Process

Phase 1 – Mandatory Minimum Requirements: In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

1. The Proposer must be a manufacturer or a Supplier authorized by the manufacturer to distribute the products they are offering. (Pass/Fail)

2. The Proposer must agree, if awarded a contract, that all "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. (Pass/Fail)

Phase 2: Technical Proposal Evaluation (100 points)

Evaluation Criteria (NOTE: The Lead State and NASPO reserve the right to use related Bidder responses from other sections of the RFP that are applicable to each section below)	Possible Points
Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function.* ***(If applicable, section B2. and B3. shall be scored separately)***	40 pts
Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 pts
Agreement with Lead State Terms and Conditions in Attachment F *Vendor Questions Worksheet Section 9*	15 pts
Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 pts
References: *Vendor Questions Worksheet Section 8*	15 pts
Total Technical Points	100 pts

Proposals receiving **80** or more technical evaluation points will have pricing evaluated and considered for award. See **Attachment D** – RFP Evaluation Scoresheet.

The Lead State may utilize all Bidder information, without regard to a proposal's technical score, to determine fair market value for goods or services sought. The Lead State is not obligated to accept the lowest price proposal. If applicable, the Lead State's evaluation will include consideration of a Bidder's qualified disabled veterans/service-disabled veteran owned business(QDV/SDVOB) status under MCL 18.1261(8). Additional information on the SDVOB preference is available at: Michigan.gov/SDVOB.

The Lead State strongly encourages strict adherence to the Lead State Terms and Conditions. The Lead State reserves the right to deem a bid non-responsive for failure to accept the Lead State Terms and Conditions. Nevertheless, the Bidder may submit proposed changes to the Lead State Terms and Conditions in track changes (i.e., visible edits) with an explanation of the Bidder's need for each proposed change. Failure to include track changes with an explanation of the Bidder's need for the proposed change constitutes the Bidder's acceptance of the Lead State Terms and Conditions. General statements, such as that the Bidder reserves the right to negotiate the terms and conditions, may be considered non-responsive.

3.5 Notice of Intent to Award

After a final selection(s) is made, the Lead State will issue an intent-to-award announcement on www.michigan.gov/SIGMAVSS, its electronic procurement system. Proposal files are public records and available for review at the offices of the Lead State by appointment.

3.6 Debrief Meeting and Bid Protest

The Lead State will post an ***Award Recommendation and Evaluation Synopsis*** which will provide instructions on how to request a debrief meeting.

If you wish to initiate a protest of the award, you must submit your written protest electronically at BidProtest-DTMB@michigan.gov no later than 3:00 pm Eastern, 5 calendar days after posting the ***Award Recommendation and Evaluation Synopsis*** on SIGMA VSS, or by 12:00 pm Eastern, the next business day if that date falls on a state holiday or weekend. The Lead State reserves the right to adjust this timing and will publish any change on the SIGMA VSS.

Additional information about the protest process is available at www.michigan.gov/micontractconnect under the “Programs and Policies” link.

3.7 Post Award Formalization of the Master Agreement

The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State’s judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating States, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Offerors or elect to make no award under this RFP.

3.8 Lead State Administrative Board

Contracts equal to or greater than $250,000 require approval by Michigan’s State Administrative Board. The State Administrative Board’s decision is final; however, its approval does not constitute a contract. The award process is not complete until the awarded contractor receives a contract fully executed by all parties.

Section 4: Administrative and Technical Response Requirements

4.1 Mandatory Minimum Administrative Proposal Requirements

This section contains the minimum requirements that must be met in order to be considered for the evaluation phase. All of the items described in this section are non-negotiable. All Offerors must state willingness and demonstrate ability to satisfy these requirements in the proposal submitted for consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

- Bidder must be the manufacturer or be authorized by the manufacturer to distribute the products they are offering.
- If a Bidder is only authorized to sell a product in a specific region, that Bidder must indicate which states they are authorized to distribute the product(s).
- All **"catalog"** pricing must be published and available at all times during the term of the Contract via website access, and/or electronic/printed price pages.

4.2 NASPO ValuePoint Master Agreement Statement of Compliance

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the **NASPO ValuePoint Standard Terms and Conditions (Attachment A)** and **Lead State Terms and Conditions (Attachment F)** required to execute a master agreement, the **Statement of Work (Attachment B)** and selected portions of the Offeror's Proposal.

Offeror must include a statement in **Section 9 of "Vendor Questions Worksheet"** that they have read and understand all of the terms and conditions as shown in the **NASPO ValuePoint Terms and Conditions (Attachment A).**

4.2.a Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in the Lead State at the prescribed levels set forth in Section 5 of **Attachment F.** The Offeror shall indicate agreement with the insurance requirements for this RFP in **section 10 of the Vendor Questions Worksheet**.

4.2.b NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in **Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A)**. Moreover, specific summary and detailed usage reporting requirements are prescribed by **Section 7 of the NASPO ValuePoint Master**

Agreement Terms and Conditions (Attachment A).

4.2.c Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. Technical and management evaluation factors may include evaluation of: the likely effectiveness of the Offeror's promotion of the Master Agreement; the Offeror's understanding of and approach to administration of and reporting under the Master Agreement; the risk that Offeror's contractual obligations to other procurement cooperatives' may impede achievement of the objectives of the ValuePoint cooperative procurement program, in which case awards could be Lead-State-Only awards. In this regard, the Proposer must complete **Section 5 of the Vendor Questions Worksheet**.

4.2.d Usage Fee and Reporting Plan

Offerors shall include in their proposals a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately. Requirements for Lead State are included in **Attachment F.**

4.3 Lead State Terms and Conditions

Refer to **Attachment F** for the Lead State Terms and Conditions that apply to this solicitation. Offeror shall indicate in their Proposal that they have read and understand all of the requirements shown in the Lead State Terms and Conditions.

4.4 Participating State Terms and Conditions

For informational purposes only, some Participating State specific Terms and Conditions are provided in Attachments to this solicitation 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. Offeror shall note in section 9. of the Vendor Questions Worksheet, that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

4.5 Technical Requirements

Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. When completing the applicable sections of this RFP, the Offeror must identify in their Proposal how their company meets (or exceeds) all requirements.

4.5.1 Statement of Work

Offeror shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the **Statement of Work** in **Attachment B**. Offeror shall show each requirement and their response in their Proposal.

4.6 VENDOR QUESTIONS WORKSHEET

Provide a detailed response to each question. “You” and “company” refers to the Proposer.

Information Sought	Bidder Response
1. Contact Information	
Bidder’s sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, phone number and vendor customer code in SIGMA VSS.	
2. Company Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Phone number.	
Website address.	
Number of years in business and number of employees.	
Legal business name and address of parent company, if any.	
Your client retention rate during the past 3 years.	
Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
Discuss your company’s history. Has growth been organic, through mergers and acquisitions, or both?	
Has Bidder ever been debarred, suspended, or disqualified from bidding or contracting with any governmental entity, including without limitation the State of Michigan? If yes, provide the date, the entity, and details about the situation.	

Has your company been a party to litigation against the Lead State or any other state or U.S. territory? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction	
Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
State your gross annual sales for each of the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	
Describe partnerships and strategic relationships you think will bring significant value to the State and/or Participating Entities.	
State the physical address of the place of business that would have primary responsibility for this account if Bidder is awarded a contract under this RFP.	
3. Customer Service & Proposer's Ability to Provide Nationwide Sales, Delivery, & Service	
What are your hours of operation and when are key account people available to us?	
Describe how problem identification and resolution will be handled.	
How will you service Lead State's account? Describe the system you will use to manage Lead State's account. Describe the system you will use to manage other state's or U.S. territory's account(s), if different. If the same, please indicate as much.	
How do you respond to customer complaints and service issues?	

Have you ever had a recall situation for any of your equipment/products; and if yes, approximately how much of an impact was it to the company to repair/replace the equipment?	
How do you assess customer satisfaction?	
What are your quality assurance measures and how are they handled in your organization?	
How long does it take to produce a typical piece of equipment (base model, not special order)?	
Are all of your most popular equipment/products (base model, not special order) maintained in inventory?	
Do you, the manufacturer, or your dealers in your network offer any value-added incentives to purchase, such as seasonal sales, and if so, how would you incorporate special sale situations in the contract?	
Is your dealer network in every state in the U.S. and U.S. Territories? If no, where are you lacking coverage?	
Describe how your dealers are chosen.	
Describe any mandatory training for your dealers that is required to maintain authorization of their distribution privileges.	
Are your dealers considered employees or independently owned businesses?	
Does one or more of your employees check-in with your dealers for purposes of auditing, inspection of premises, reporting procedures, or other on a regular basis?	
If your dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports.	
If payment is made to your independently owned dealer for your equipment/product(s), how is that addressed in your company's policies?	

Do you offer extended warranties for your products? If yes, explain your extended warranties and provide the terms of your extended warranty plans. Also, will you offer discounts on your extended warranties?	
Describe your system that Purchasing Entities would use to place orders and receive results. Include all methods of order submission.	
Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.	
What measures do you take to protect sensitive customer information?	
Describe any product, equipment, maintenance, or operator training programs that you provide as part of any resulting contract. Please include details, such as whether training is standard or optional, who provides training, and any costs that apply.	
Describe your company's capability to meet the needs of the Lead State and other NASPO members across the country. Your response should address at least the following areas: - Sales Capabilities - Dealer Network or other means of distribution (If applicable, provide Dealer List) - Service Capabilities Please include details, such as the locations of your network of sales and service providers, the number of workers (full- time equivalents) involved in each sector, whether these workers are your direct employers (or employees of a third party), and any overlap between the sales and service functions.	
Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract.	
If any, please describe any specific contract requirements or restrictions that would be applicable only to NASPO Members outside of the contiguous US states, such as Hawaii, Alaska, and/or any US Territories.	

If you are awarded a contract, how will you train your sales management, dealer network, and direct sales teams (whichever apply) to support the customers of the resulting contract? Please include how you will provide sales and support coverage for customers nationally.	
4. Industry Recognition & Marketplace Success	
List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
Indicate separately what percentages of your sales are to the government and education sectors in the past three years?	
Describe any relevant industry awards or recognition that your company has received in the past five years.	
5. Promoting the use of the Master Agreement (Per Request For Proposal section 4.2c.)	
Describe your company's experience working with contracting cooperatives.	
List the cooperatives through which you currently have a contract and provide sales volume information for each. Identify any restrictions on pricing and sales imposed by your other cooperative contracts.	
Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.	
Describe how you intend to encourage usage of your Master Agreement by Purchasing Entities.	
Describe your approach to negotiation of Participating Addenda. Describe the extent to which you 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?).	
6. Qualified Disabled Veteran/Service-Disabled Veteran-Owned Business Program	
Under MCL 18.1261, a "qualified disabled veteran" means a business entity that is 51% or more owned by 1 or more veterans with a service-connected disability. A "service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16). Are you a qualified disabled veteran?	**Enter YES or NO.**
To demonstrate qualification as a qualified disabled veteran, you must provide: (a) Proof of service and conditions of discharge (DD214 or equivalent); (b) Proof of service-connected disability (DD214 if the disability was documented at discharge or Veterans Administration Rating Decision Letter or equivalent if the disability was documented after discharge); and (c) Legal documents setting forth the ownership of the business entity. In lieu of the documentation identified above, you may provide proof of certification by the National Veterans Business Development Council.	Enter the names of documents submitted with your proposal to demonstrate status as a qualified disabled veteran.
7. Participation in RFP Development or Evaluation	
Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees.	**Enter YES or NO.** If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.

If you are awarded a contract under this solicitation, in order to provide the goods or services required under a resulting contract, do you intend to partner or subcontract with a person or entity that assisted in the development of this solicitation?	**Enter YES or NO.** If you enter "YES," you are not eligible for contract award. An awarded vendor may not partner or subcontract with anyone to provide goods and services required under a resulting contract if that subcontractor or partner assisted in the development of this solicitation.
Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP?	**Enter YES or NO.** If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.
8. State Government Experience and Prior Experience	
Does your company have experience working with the state governments? If so, please provide a list (including the contract number) of the contracts you hold or have held with the any state government customer for the last 10 years.	
Describe at least **3** relevant experiences from the last **5** years supporting your ability to successfully manage a contract of similar size and scope (regardless of contracting state) for the work described in this RFP.	
Experience 1	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	

Experience 2	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 3	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
9. Contract Terms	

Attachment A – NASPO ValuePoint Standard Contract Terms: Bidder must affirm agreement with the attached NASPO ValuePoint Standard Contract Terms. If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Attachment F– Lead State Terms and Michigan Participating Addendum **:** Bidder must affirm agreement with the attached Lead State Terms and Conditions . If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Bidder understands they may be required to negotiate additional terms and conditions when executing a Participating Addendum as indicated in section **4.4 Participating State Terms and Conditions**.	**Enter YES or NO.**
10. Insurance Requirements	
Bidder must affirm agreement with the insurance requirements in **Section 5** of **Attachment F.**	
11. Michigan Economic Impact	
Number of employees currently employed at locations within the State of Michigan.	
Number of additional employees to be employed at locations within the State of Michigan if awarded this Contract (if any)	
Minimum wage paid to employees employed at locations within the State of Michigan.	
Average wage paid to employees employed at locations within the State of Michigan.	
Percentage of employees employed at locations within the State of Michigan that are covered by employer-provided health insurance.	
12. Labor and Environmental Laws Compliance	
Bidder must disclose any violations of state or federal labor and employment laws and regulations received within the past five years.	
Bidder must disclose any violations of state or federal environmental laws and regulations received within the past five years.	
13. Other	

Classification of Employees. I certify that the company has properly classified its employees in accordance with federal/state labor and employment laws.	**Enter YES or NO.**
Abusive Labor Practices. The Contractor certifies that it will not furnish any Deliverable that was produced fully or partially by forced labor, forced or indentured child labor, or indentured servitude.	**Enter YES or NO.**
Certification of Michigan Business- Public Act 431 of 1984, Sec. 268. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Business Tax Corporate Income Tax Return. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Income Tax return showing income generated in, or attributed to the State of Michigan. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, withheld Michigan Income Tax from compensation paid to the company's owners and remitted the tax to the Michigan Department of Treasury.	**Enter YES or NO.**
Iran Linked Business- Public Act 517 of 2012. I certify that the Company is not an Iran-Linked business as defined by Public Act 517 of 2012.	**Enter YES or NO.**
Clean Corporate Citizen. I certify that the Company is a Clean Corporate Citizen as defined by the Environmental Protection Act, 1994 PA 451.	**Enter YES or NO.**
Convict Labor. The Contractor certifies that if using convict labor, it is complying with all applicable state and federal laws and policies.	**Enter YES or NO.**
SOM Debt/Tax Payment. All SOM tax/debts. I certify that all applicable State of Michigan taxes are paid, and that no outstanding debt is owed to the State of Michigan.	**Enter YES or NO.**
Authorization to Verify Information Provided by Vendor. I authorize the State to verify that all information provided in this registration, in bidding and contracting documents, and any attachments or supplement documents and processes are accurate.	**Enter YES or NO**.

Section 5: Price and Cost Proposal

The Cost Proposals will be evaluated independent of the technical evaluation. Cost proposals must be submitted to the Lead State as a separate document in the Offerors' Proposals. **Do not embed the cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per **Attachment C.**

Cost for the NASPO ValuePoint Master Agreements shall be based on the following:

Offeror must include all applicable costs, prices, and rates as required by **Attachment C**, Pricing. Prices and rates shall include all applicable anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

Freight from any Contractor to the dealer network locations within the lower 48 states will not be paid by the purchasing entity. Any additional freight applicable to shipments to the nearest port of Alaska and/or Hawaii must be provided.

The Lead State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Offeror's or any subcontractor's employee's wages. The Lead State will pay for any applicable Lead State or local sales or use taxes on the products provided or the services rendered within the Lead State. If required by Lead State, taxes shall be included as a separate line item on an Offeror's invoice. The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

5.1 Price and Rate Guarantee Period

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

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

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

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

2. Definitions

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

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

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

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

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

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

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

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

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

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum. The Lead State is also a Participating Entity.

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

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

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

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

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

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

4. Amendments

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

5. Participants and Scope

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

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

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

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

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

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

g. **Resale**. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell

Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

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

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

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

(6) Purchase Order date; (7) Ship Date; (8) and line item description, including (if applicable) pricing for each: chassis, body/equipment item, and installation by product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is Microsoft Excel or equivalent.

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

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

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

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

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

b. Contractor agrees, as Participating Addendums become executed, if requested by

ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

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

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

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

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 26, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 26 or to terminate for default pursuant to section 28.

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

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or

effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Price and Rate Guarantee Period

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

11. Individual Customers

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

Administration of Orders

12. Ordering

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

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

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

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

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

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

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

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

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

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

13. Shipping and Delivery

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

b. All deliveries will be "Inside Deliveries" as designated by a representative of the

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

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

14. Laws and Regulations

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

15. Inspection and Acceptance

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

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

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

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the

process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

16. Payment

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

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor’s skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under

this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

General Provisions

19. Insurance

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

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

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

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

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

d. Prior to commencement of performance, Contractor shall provide to the Lead State a

written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

20. Records Administration and Audit

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

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

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

21. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

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

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

22. Public Information

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

23. Assignment/Subcontracts

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

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

24. Changes in Contractor Representation

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

experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

25. Independent Contractor

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

26. Cancellation

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

27. Force Majeure

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

28. Defaults and Remedies

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

(1) Nonperformance of contractual requirements; or

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

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

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

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

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

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

(1) Exercise any remedy provided by law; and

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

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

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

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

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

29. Waiver of Breach

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

30. Debarment

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

31. Indemnification

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

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

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

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

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

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

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

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor.

If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

32. No Waiver of Sovereign Immunity

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

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

33. Governing Law and Venue

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

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

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of

priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

34. Assignment of Antitrust Rights

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

35. Contract Provisions for Orders Utilizing Federal Funds

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

36. Leasing or Alternative Financing Methods

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

Attachment B – Statement of Work

B1. SCOPE & FUNCTION REQUIREMENTS

B1.1 Scope –The Lead State of Michigan Department of Technology, Management and Budget, Central Purchasing Division, in collaboration with NASPO ValuePoint is focused to competitively solicit and award to the Proposers that demonstrate they can provide the broadest scope of required equipment, at the most competitive pricing available (best value: quality versus cost), to all States and Territories of the USA.

Bidders shall demonstrate they are qualified to provide, all or a portion thereof, of equipment/products and all related services necessary to deliver equipment/products to Purchasing Entities within standards or codes regulated by the industry and the law**.**

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.2 Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – The focus for this RFP is to provide equipment that is self-propelled (turnkey) or mounted to a chassis. The cost proposal in Attachment C – Pricing reflects that. Many Bidders may also provide additional equipment that does not meet the "self-propelled" or "chassis mounted" criteria. The lead State and NASPO's intent is to include all associated equipment in a contract award to successful Proposers. Proposers that do not meet the criteria for "self-propelled" or "chassis mounted" equipment but do provide comparable equipment as those listed in the Attachment C, may submit a proposal. The Proposer shall insert their pricing information on the Attachment C, in the "other" section within the most applicable category.

Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services shall include, but is not limited to:

a) Aerial Equipment - boom cranes, buckets, digger derricks, knuckle booms, platforms and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Aerial Equipment".

b) Refuse Equipment – Refuse/recycling bodies, Gripper systems, lift systems, loader-hopper bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Refuse Equipment".

c) Roadway Equipment – Asphalt distributer bodies, live bottom bodies, asphalt flusher/sprinkler bodies, asphalt hot box/recycler, pothole patchers, roll-off patchers,

asphalt sealers, dump bodies, service bodies, road ditch maintenance, van service bodies, roll-off cable hoists, hydro excavators, sprayers, lube skids, grease disposal, tanks, mechanic bodies, street sweepers, loading/grapple, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Roadway Equipment”.

d) Snow & Ice Equipment – Airport equipment, sweepers, liquid de-icing systems, salt/sand spreaders, snow melters, plows, blades, blowers, wings, specialty vehicles, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Snow and Ice Equipment”.

e) Vacuum/Sewer Equipment – tanks, flushing systems, catch basin cleaners, vacuum excavators, water recycling, vacuum bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Vacuum/Sewer Equipment”.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.3 Out of Scope - This solicitation should NOT be construed to include any of the following:

Construction and agricultural equipment, including but not limited to dozers, loaders, excavators, skid steers, agricultural tractors, mowers, trailers for hauling, and truck chassis (stand-alone).

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.4 Solutions Based Solicitation - Because of the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the State of Michigan and NASPO are asking Bidders to provide solutions that meet industry and legal standards for the complex scope of truck upfitting.

The State of Michigan and NASPO ValuePoint RFP is a solicitation that does not contain detailed specifications. However, equipment guidelines are provided for pricing and evaluation purposes per Attachment C. Where items are specified, those items should be considered the minimum required.

When proposing solutions, successful Bidders should focus on the State's and NASPO's "Ultimate Goal". **The "Ultimate Goal" of this RFP is to provide a broad scope of needed equipment with all associated services (sales, warranty, parts, and maintenance & repair) to Purchasing Entities of all States and Territories of the USA, while providing the most competitive pricing available (Best Value) to Participating States.** The Bidders proposed business approach is the solution provided to achieve the "Ultimate Goal". It may be exactly how a Proposer conducts business currently, or it may be a slightly different approach in order to better achieve the "Ultimate Goal". For examples see **B. 1.5 and B.1.6** below. Proposals will be evaluated, in part, on the Bidders' demonstrated ability to meet or exceed the "Ultimate Goal". It is recommended that Proposers submit their complete line of products and services described in the scope of this RFP. The Lead State and NASPO, reserve the right to accept any or all equipment/products and services proposed for award, for any reason.

The contractual solutions outlined in **B.1.6 a) and b)** are suggested, however, other proposed equitable contractual solutions shall be considered. Each primary equipment category will be awarded to one or more Bidders provided each category receives responsive, responsible bids. Due to the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the pricing model shall be one or a combination of the following:

i) applicable quoted base pricing per proposed **Attachment C Pricing** including, but not limited to chassis, equipment item, installation, and delivery,
ii) "Percentage off" of the Supplier's most current dated government or commercial catalog or price list, and
iii) quoted installation per applicable hourly rate.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.5 Business Solutions - The following items are suggested business solutions. The Proposer may provide a combination of any one of these solutions. The Lead State and NASPO are seeking Contractors that can provide the broadest scope of needed equipment, with all associated services (sales, warranty, rental, parts, and maintenance & repair). The Lead State and NASPO reserve the right to award one, all, or any combination of the following suggested solutions. **(Stand-alone contracts for rental, parts, and maintenance & repair will not be awarded. Rental, parts, and maintenance & repair shall only be included to awarded "Sales" contracts)**

a) Equipment Only – Purchasing Entity's intent is to purchase only the

equipment/products to install themselves or have a third-party installer provide the installation services.

b) Equipment with Installation – Purchasing Entity's intent is to purchase equipment/products and have the Proposer, or their Dealer/Distributer, provide the installation services on a chassis provided by the Purchasing Entity.

c) Turn-Key – Purchasing Entity's intent is to purchase equipment/products installed on a chassis. The chassis is included in the purchase, providing the Purchasing Entity with a complete, fully functional vehicle ready for its intended function.

d) Equipment Rental – Purchasing Entity's intent is to rent "Turn-Key" equipment/products rather than purchase. **(Stand-alone contracts for equipment rental will not be awarded)**

e) Equipment Parts – Purchasing Entity's intent is to purchase replacement parts for previously purchased equipment/product. **(Stand-alone contracts for equipment parts will not be awarded)**

f) Maintenance & Repair Service – Purchasing Entity's intent is to acquire maintenance and repair service from the Contractor. **(Stand-alone contracts for Maintenance & Repair Service will not be awarded)**

Any deviations from industry standards must be identified by the Proposer. The Proposer must explain how the equipment/products and services they propose will provide equivalent performance and functionality in all applicable aspects. Failure to do so may result in the rejection of the proposal, in whole or in part.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.6 Contractual Solutions

a) Manufacturer as Contractor - Contractors may offer any brand for which they are a manufacturer. Sales, installation, parts, maintenance, repair, and warranty service would be achieved via the manufacturer's brick & mortar locations, and/or their dealers, distributers, or possibly their own or a third-party mobile maintenance/repair/warranty service provider. This solution would likely cover many States for sales & service requirements. However, the equipment selection would be limited to the manufacturer's offerings.

With their response to this solicitation, suppliers must provide a complete Microsoft Excel spreadsheet listing of all dealers or authorized representatives within the entire area to be covered. Minimum Dealer information required is

the name of business, address, contact name(s), phone number(s) and email address(es) and website(s).

b) Distributor/Dealer as Contractor - Contractors may offer any brand for which they sell and service as an authorized distributor/dealer[1]. Sales, installation, maintenance, repair, and warranty service would be achieved via the distributer's and/or manufacturers' brick & mortar locations, manufacturers' dealers, and/or possibly their own, their manufacturers' or a third-party mobile maintenance/repair/warranty service provider. This solution would enable a regional distributer/dealer to provide multiple brands to many more states and territories.

Bidding distributor/dealers seeking to submit a proposal with this type of structure would be required to do the following:

i. Submit with your bid, a certified letter, from each participating manufacturer, that communicates agreement to participate with this contractual arrangement, and shall provide the most competitive pricing commensurate with a national cooperative contract with NASPO.
ii. Submit with your bid, from each participating manufacturer, a complete list of their authorized dealers in all states.
iii. If awarded a contract, Bidder will be required to negotiate Participating Addenda with each state wishing to participate in this agreement, and provide all other administrative services necessary to execute, manage and maintain their contract with each participating State, including, but not limited to, providing contract spend reports, process payments for the required administrative fees on a regular basis (quarterly), and process necessary addenda for contract activities.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

[1] **Please refer to items i, ii, and iii in this section.**

B1.7 Contractor Responsibility - The Lead State and NASPO require a Contractor to take responsibility for the performance of all delivered equipment/products and services. It is assumed the Contractor retains sub-contractors in one or several functions required to provide products and services to the Purchasing Entity. The responsibility for all actions pertaining to delivery of product and services by sub-contractors would ultimately fall upon the Contractor.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.8 Disclosure of Subcontractors
If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor. Of the total bid, the price of the subcontractor's work. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- Authorized Dealer's are not considered a "Subcontractor" for the purposes of this solicitation.

Bidder must provide detailed information as requested in the requirement(s):

The legal business name, address, telephone number of the subcontractor(s):	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities:	
The relationship of the	

subcontractor to the Bidder:	
Whether the Bidder has a previous working experience with the subcontractor. **If yes, provide the details of that previous relationship:**	
A complete description of the Contract Activities that will be performed or provided by the subcontractor:	
Of the total bid, the price of the subcontractor's work:	

B2. RENTAL REQUIREMENTS (Optional)

B2.1 Specification (Guidance)

Contractor shall provide Equipment for rental per **Attachment C, Pricing**. **(Stand-alone contracts for equipment rental will not be awarded).** The Supplier must include the following:

i. Only listed items that meet these requirements shall be included under this contract
ii. Daily, weekly, and monthly rental rates.
iii. Percentage discount offered by category for such rates.

The Contractor must provide deliverables, including the staffing to accomplish all service incidentals necessary to complete the work, as set forth in this solicitation.

a) The Contractor must provide make and model of all equipment offered for rental. Brand or trade names provided by the Contractor are for identification purposes, and do not limit the Contractor to such brands, provided alternates offered are equal in quality and function to those specified.

b) All rental equipment is to meet or exceed applicable federal and state safety standards as mandated by OSHA, and MIOSHA Motor Carrier Division. This equipment is to meet or exceed applicable American National Standards Institute (ANSI) specifications. The Contractor will provide written documentation guaranteeing compliance with all safety standards.

c) The Contractor shall provide written documentation confirming satisfactory testing on equipment where mandated by law (to include but not limited to: stress testing, dielectric testing, visual inspections) completed by a licensed and reputable testing firm.

d) Rental equipment shall be no more than four (4) years old.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.2 Availability and Delivery of Equipment

a) All requested orders must be delivered within two (2) calendar days/48 hours after receipt of order.

b) Emergencies will be responded to within one (1) to six (6) hours. Equipment shall be available as both F.O.B. delivered and F.O.B. pick-up.

c) No premium rates will be charged for delivery after normal business hours.

d) Rental or leased equipment items shall be fully fueled and operational at the time of pick-up or delivery.

e) The Contractor will be required to perform a walk-around equipment inspection at the time of delivery and pickup.

f) The Contractor (or their designee) and the Program Manager (or their designee) shall document the inspection by mutual execution of an inspection document provided by the Contractor.

g) The Purchasing Entity is responsible for refueling all rented equipment upon its return.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.3 Maintenance/Service

a) The Contractor will be responsible for all maintenance/service necessary to maintain satisfactory operation of rental equipment at no cost to the Purchasing Entity.

b) Equipment shall be serviced according to manufacturer specifications. The Contractor shall maintain an equipment schedule for service and retain complete lifetime service records for all equipment.

c) If a repair is needed and requires the piece of equipment to be out of service, the Contractor shall provide a replacement.

d) Contractor will maintain a Dedicated Product Support Department to ensure proper function of rented or leased equipment.

e) On-site maintenance must be performed according to the recommended manufacturer maintenance schedule.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.4 Training

The Contractor must provide the following training:

An orientation training shall be provided upon request at the time of delivery. The training shall be deemed sufficient by the Purchasing Entity, to include detailed equipment operation and minor maintenance and inspection practices.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3. PARTS, MAINTENANCE & REPAIRS REQUIREMENTS (Optional)

B3.1 Parts - (Stand-alone contracts for equipment parts and maintenance and repairs will not be awarded) Quality of Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the agency contact person. Aftermarket Repair parts must be equal to or exceed Contractor original equipment manufacturer's (OEM) specifications. Repair parts must be packaged and distributed under their respective nationally known name brands. All rebuilt or remanufactured parts must meet the same requirements as listed above. Some repair parts may be required to be original equipment manufactured repair parts Contractor's dealer network must carry a complete line of OEM parts for all models of equipment they carry. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.2 Warranty/Buy Back - Contractor are 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 Purchasing Entity. A copy of the Warranty shall be included for replacement parts purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.3 Maintenance/Repair Facilities - Repair Facilities that will perform the warranty work of items under this Contract shall be identified as the Supplier's dealer network. The manufacturer, whether contracted directly, or associated with the Distributer by certified letter, is responsible for ensuring that the facilities are able to adhere to the contract requirements for warranty work performance.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4. GENERAL REQUIREMENTS

B4.1 Licensing - Sales of motor vehicles are subject to state Motor Vehicle Statutes. License requirements for states participating in the contract will be addressed in each state's participating addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.2 Warranty - Equipment/Options/Accessories/Attachments. The Contractor agrees the products furnished under this Contract shall be covered by all commercial

warranties the Contractor or, if Contractor is a supplier only, that the product manufacturer 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. The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the agency contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no additional cost to the agency. Supplier 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. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment: Name of Purchasing Entity and division, if applicable. Make, Model, VIN, and equipment control number of Purchasing Entity (Inventory number). Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this contract shall be authorized by the supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by trained certified, or authorized service technicians. Equipment that will remain in the supplier'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 chassis and equipment in the Contractor's possession.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.3 Ordering - No minimum orders will be considered under this Contract. Orders should not be implemented by the Purchasing Entity solely on the Contractor's catalog. The Catalog shall be used as a guide for identifying available equipment and options, and a source for confirming quoted pricing from the Contractor. The Purchasing Entity should **always** contact the Contractor's applicable point of Sale prior to issuing a Purchase Order. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Supplier's manufacturer/dealer for the

equipment being purchased. Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.4 Payment - Contractor must accept mailed and electronic payments.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.5 Documents - Contractor shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, and with the product invoice, or at the request of the Purchasing Entity. At the Contract Administrator's or Purchasing Entity's request, Suppliers shall provide catalogs and current price lists at no charge. A copy of the catalog pricing page or price list is to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in Attachment C Pricing.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.6 Changes in Contractor Contact - The Supplier shall notify the Contract Administrator 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 Contract Administrator shall be able to contact the Supplier at all times during business hours.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.7 Invoices - To ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure the invoice shall include the following information: Purchase order number if applicable. Make, model, and VIN number of equipment. Name of Purchasing Entity. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided. The Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering party for their accounting purposes. Name of company who provided the products/services.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.8 Prompt Payment Discounts - Prompt payment discounts will not be considered in the evaluation of offers. However, any discount offered will be annotated on the award and may be taken if payment is made within the discount period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.9 Delivery - Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Supplier until delivered and accepted. Delivery shall be made in accordance with instructions on the purchase order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, the Supplier shall seek clarification from the ordering party and/or the Contracting Officer. Delivery on parts is to

be made within 30 days. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost. Some ordering entities will have the capacity to pick up their equipment from the dealer.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.10 Training - Supplier shall provide information for all training opportunities for the equipment being purchased, including CDs, DVDs, in house, orientation type training, maintenance, and operator.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.11 Pricing - The State is requesting pricing for new equipment within the scope of this RFP for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services for purchase and/or rental, parts, maintenance & repairs. Specification guidelines are provided within the Pricing table per **Attachment C**, using the Good/Better/Best model for pricing similar models of equipment within the same equipment usage category. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers may submit actual pricing with the percentage discount already applied, as long as the Supplier list price is stated first, then the discount, then the final discounted price.

Pricing is firm for a 365-day period ("Pricing Period"). The first pricing period begins on the effective date of the Contract. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period. Only one price adjustment is allowed per "Pricing Period".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.12 Price Adjustments - Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes for no longer than 30 days, unless extended by mutual agreement. If no agreement on an adjusted price is achieved after 30 days of negotiation, the Participating Entity may remove the item from the list of offerings, at its sole discretion.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.13 Special Pricing - During periods of market instability due to fractures in the supply chain or other factors, pricing adjustments may be issued on a quote-by-quote basis by the Contractor for a specified period of time as designated in a contract amendment. These amendments are not subject to the price adjustment limitations in B4.12. During this limited period of time, the contract's current price sheet shall be used as "baseline pricing". The quotes shall be structured with "baseline pricing" plus or minus actual Contractor price impacts due to the current market conditions. All quotes provided shall be effective for a minimum of 30 days. Once the quote pricing period expires, pricing shall revert to the contract's current "baseline pricing".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.14 Price List – All "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. When price sheets are updated, the successful Contractor will provide the Lead State Contract Administrator and Issuing Officer an electronic price list in Excel or Excel compatible in ".xls" format that includes

both the published list prices, the discount used to compute the final cost, and the final NASPO ValuePoint cost.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.15 Allowable Charges Freight/Shipping/Set-up Fees -. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile, or the dealer is allowed to set the rate. Delivery is to be FOB Destination (of Purchasing Entity) freight collect. Any Freight, shipping and handling costs and set-up fees paid by the Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.16 Allied Equipment

Allied Equipment may only be sold in connection with the sale of a contract item. Allied Equipment must be clearly labeled on the purchase order or quote as Allied Equipment. "Allied Equipment" means an incidental item, attachment, accessory, part, or a specific bundle of the foregoing that is not manufactured by the contract Supplier but has been requested by a Purchasing Entity to complete the purchase of equipment awarded on Contract. Allied Equipment may modify, the contract item with which it is being sold, but it may not substantially convert the contract item to such an extent that it would be substantially similar in purpose to, and compete with a contract item awarded to another Supplier.

a) Awarded Vendor(s) may offer Allied Equipment that compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). Allied Equipment will include:

i) Accessories

ii) Components

iii) Upgraded parts

b) Allied Equipment may only be acquired through the Awarded Vendor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s).

c) Allied Equipment must be priced at a minimum discount of 15% from MSRP or List Price.

d) Allied Equipment shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all Allied Equipment in a single Order shall be determined by the Participating State or Entity.

e) It shall be at the discretion of the Participating State or Entity to allow Allied Equipment in their Participating Addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.17 New Products - All proposed equipment/products shall be delivered as new and fully operational to the Purchasing Entity's location. Exceptions must be clearly disclosed in the "Notes" section of **Attachment C Pricing.**

New Products may be added to the contract when pricing updates per section B 4.12 Pricing Adjustments are requested. The discount cannot be lowered throughout the Contract period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.18 Discontinued Products - Suppliers are to notify the Contract Administrator of any changes in their schedule of equipment such as discontinued products or replacement models. The updating of new and discontinued products shall be completed when pricing adjustments are initiated per section

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.19 Liquidated Damages - Late or improper completion of the Contract Activities will cause loss and damage to the Participating Entity and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, if there is late or improper completion of the Contract Activities the Participating Entity is entitled to collect liquidated damages in the amount of $5,000 and an additional $100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the Participating Entity, and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, the Participating Entity may assess liquidated damages against Contractor as specified below.

- The Participating Entity is entitled to collect $1,000 per individual per day for the removal of any Key Personnel without prior approval of the Participating Entity.
- The Participating Entity is entitled to collect $1,000 per individual per day for an unapproved or untrained key personnel replacement.

B4.20 Service-Level Agreements (SLAs)

A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.

B. The Lead State reserves the right to reconsider or amend SLA amounts for split awards should they occur.

C. Please Note: Should Bidders require clarification or have any questions with regard to the SLAs, they should submit them during the *Question and Answer Period* of this solicitation; please see the **Proposal Instructions** for the timeline.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose	• Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Delivery shall not exceed the agreed upon delivery date by more than 14 calendar days. • Equipment purchases requiring installation services: Once the Contractor has secured parts for installation, a mutually agreed upon delivery date shall be established with the Purchasing Entity. Delivery shall not exceed the agreed upon delivery date by more than 7 calendar days.
Acceptable Standard	1. All deliveries must occur in accordance with the Purchasing Entity's receiving hours. 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager prior to the scheduled delivery date and time. 3. Items, brands, and quantities delivered will match the Order Confirmation exactly. 4. Signed and dated packing slips will be provided to Purchasing Entity at the time of delivery. 5. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager. 6. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate. The acceptable standard is 100% compliance.
Credit Due for Failing to Meet the Service Level Agreements	1. 5% of the purchased price may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. 10% of the purchase price may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed. At the discretion of the Participating Entity, these credits may be applied toward any amount payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Attachment D - RFP Evaluation Scoresheet

TRUCK BODIES, SEASONAL MAINTENANCE EQUIPMENT, & UPFITTING SERVICES #210000000535 The State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division (Lead State)

Firm Name: _____

Evaluator: _____

Date: _____

Score will be assigned as follows:

0 = Failure, no response
1 = Poor, inadequate, fails to meet requirement
2 = Fair, only partially responsive
3 = Average, meets minimum requirement
4 = Above average, exceeds minimum requirement
5 = Superior

		Score (0-5)	Weight	Points
1. Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function* ***(If applicable, section B2. and B3. shall be scored separately****)*	40 points possible		X8	
2. Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 points possible		X3	
3. Agreement with Standard Contract Terms: *Vendor Questions Worksheet Section 9*	15 points possible		X3	
4. Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 points possible		X3	
5. References: *Vendor Questions Worksheet Section 8*	15 points possible		X3	
TOTAL EVALUATION POINTS	**(100 points possible)**		**Total**	

Attachment E - Distributor (Dealer) Agreement

(Example of an Approved Distributor Agreement)

APPROVED DISTRIBUTOR (DEALER) AGREEMENT – [Name of State]
FOR Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – RFP 210000000535

NASPO ValuePoint Contract Number: _____

The State of_____(**State**) has entered into a contract with _____(**Manufacturer**) to provide Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services to the State and political subdivisions within the State resulting from State of Michigan Request for Proposal 210000000535 (**Contract)**.

Specific independent approved distributors will be authorized by **Manufacturer** to provide Truck Bodies, Seasonal Maintenance Equipment, and related services required for purchasing Truck Bodies, Seasonal Maintenance Equipment (equipment installation). ("Distributor(s)" herein includes **Manufacturer's** approved distributors).

This Distributor Agreement will identify the services to be provided by Dealer, as they may be used to satisfy Manufacturer's obligations under the terms of the Contract. Dealers will need to sign the Approved Distributor Agreement before the Dealer will be authorized to provide services to the State. This Agreement will be effective on the last signature date below.

The authorized Dealer agrees to the following:

1. **PROFESSIONAL SERVICES**
   Dealer agrees to provide the following services on behalf of Manufacturer in furtherance of Manufacturer's obligations under the terms of the Contract:

   [Insert List of Services to be Provided by Dealer]

   Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work under the Contract, if applicable. Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State in furtherance of the Contract.

2. **INSURANCE REQUIREMENTS**
   The Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

3. **INDEMNIFICATION/HOLD HARMLESS**
   The Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Dealer, its employees or subcontractors or volunteers.

4. **MANUFACTURER ACKNOWLEDGMENT**

   Manufacturer acknowledges and agrees that: (1) Dealer is a subcontractor, as it relates to any services that Dealer provides to State to satisfy an obligation of Manufacturer under the terms of the Contract; (2) Dealer is an approved distributer of Manufacturer; and (3) that Dealer will abide by and comply with the terms and conditions of the Contract.

IN WITNESS WHEREOF, by signing where indicated below, the authorized representative of the Dealer executes and agrees to the terms of this Distributor Agreement.

DEALER

[Signature of Dealer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

Manufacturer

[Signature of Manufacturer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

DEALER INFORMATION

Legal Status: Corporation † Partnership † Sole Proprietor

Dealer Name:_____

Address:_____

City, State, Zip:_____

Phone:_____ **Fax:_____**

Contact Name:_____

Email Address:_____

Federal Tax ID #:_____

Attachment F- Lead State Terms and Michigan Participating Addendum

These LEAD STATE TERMS AND CONDITIONS (or the State of Michigan's Participating Addendum) are agreed to between the State of Michigan (the "**State**") and [Insert Company Name] ("**Contractor**"), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on [Month, Day, Year] ("**Effective Date**"), and unless terminated, expires on [Month, Day, Year] *Note: (3 year base contract).*

This Contract may be renewed for up to two one-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Attachment B – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

   Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Attachment B**.

   Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond if, in the opinion of the State, it will ensure performance of the Contract

2. Notices. All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

3. Contract Administrator. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

State:	Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

4. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
Scott Poyer Poyers@michigan.gov 517-719-6802	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

5. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result

from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: $1,000,000 Per Accident	Policy must: (1) be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of

coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

6. Administrative Fee and Reporting. Contractor must pay an administrative fee of **.5%** on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: https://www.thepayplace.com/mi/dtmb/adminfee

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the Purchasing Entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

7. Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

8. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and

taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

9. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor. For the purposes of this Contract, any approved independent distributor (Dealer) of Contractor, having executed a Distributer/Dealer Agreement attached as **Attachment E** will be considered a subcontractor of Contractor, in accordance with the terms of this Section.

10. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

11. Background Checks. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in **Attachment B**, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

12. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

13. Change of Control. Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change

in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

14. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in **Attachment B**.

15. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Attachment B. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

16. Delivery. Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in **Attachment B**. All containers and packaging become the State's exclusive property upon acceptance.

17. Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities,

Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

18. Warranty Period. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Attachment B**. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

19. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Attachment B**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

20. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in **Attachment B**.

21. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b)

terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

22. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 23, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

23. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

24. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to

Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

25. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

26. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the

State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

27. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

28. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

29. State Data. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

30. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party,

without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. **Obligation of Confidentiality**. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. **Cooperation to Prevent Disclosure of Confidential Information**. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party 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 Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. **Remedies for Breach of Obligation of Confidentiality**. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. **Surrender of Confidential Information upon Termination**. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State

following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

31. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

32. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material

breach of this Contract, which entitles the State to terminate this Contract under Section 22, Termination for Cause.

33. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

34. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

35. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

36. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

37. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

38. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

39. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused

by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

40. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

41. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

42. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

43. Entire Agreement and Order of Precedence.

These Lead State Terms and Conditions which are also referred to herein as the State of Michigan's Participating Addendum (including all amendments and attachments hereto) and the Master Agreement (including all amendments and attachments thereto) (collectively, the "**Contract**") constitute the entire agreement between the parties concerning the subject matter of this Contract and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. The terms and conditions of this Participating Addendum (including all amendments and attachments hereto) shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement as now or hereafter amended. This Contract may be modified only by a written document executed by the parties hereto.

NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS

CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

Any terms that may be contained in Attachment G or any other Purchasing Entity's or Participating State's Participating Addendum are expressly excluded from incorporation into this **Contract** and will have no legal effect on the contractual relationship between the Lead State of Michigan and Contractor. Further, the State of Michigan is not, and will not be, a party to any agreements or individual contracts entered into by and between Contractor and any other Purchasing Entity.

The following Attachment(s) and Exhibit(s) are hereby incorporated by reference and made part of these Lead State Terms and Conditions without difference:

Attachment B	**Statement of Work**
Attachment C	**Pricing**
Attachment E	**Distributer/Dealer Agreement**
Exhibit 1 to Attachment F	**Federal Provisions Addendum**
Exhibit 2 to Attachment F	**Byrd Anti-lobbying Certification**

44. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

45. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

46. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

47. Contract Modification. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

EXHIBIT 1 TO ATTACHMENT F
FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in 41 CFR Part 60-1.3, and except as otherwise may be provided under 41 CFR Part 60, then during performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the

administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contract** in excess of $2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of $2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which

prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

a. **Contractor**. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. **Subcontracts**. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. **Breach**. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

a. **Overtime requirements**. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

c. **Withholding for unpaid wages and liquidated damages**. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

d. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

d. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **$100,000 or more** shall file the required certification in Exhibit 2 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal

contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under 2 CFR 200.322, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;

ii. Meeting contract performance requirements; or

iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

a. Access to Records. The following access to records requirements apply to this contract:

i. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed

iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

b. Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

c. DHS Seal Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

d. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

e. No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."

f. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

EXHIBIT 2 TO ATTACHMENT F
BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than $100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [enter contractor name here], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

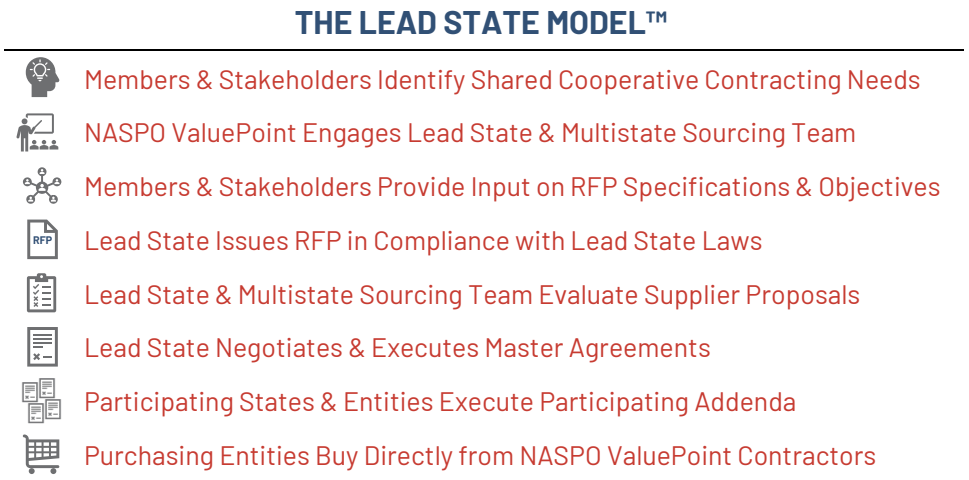
_____

Date

Attachment G- Potential 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.



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

Historical Usage

As this is a new portfolio established by NASPO ValuePoint there is no historical send to note for - Truck Bodies, Seasonal Maintenance Equipment & Uplifting Services.

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
Hawaii	N/A	N/A
Montana	N/A	Exhibit 1 to Attachment G
South Dakota	$4,000,000.00	N/A
New Mexico	N/A	Exhibit 2 to Attachment G
South Carolina	NA	NA
Colorado	$3,000,000.00	Exhibit 3 to Attachment G

TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: $7,000,000.00
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 1 to Attachment G – Montana Terms and Conditions

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

State of Montana Terms and Conditions

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

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

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

ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

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

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

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

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

STATE OF MONTANA ADMINISTRATIVE FEE: The Participating Entity assesses an

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

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

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

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

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

Federal Terms and Conditions (Non-Construction)

1. NONDISCRIMINATION

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

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

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

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

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

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

2. LOBBYING

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

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

3. DRUG-FREE WORK PLACE

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

4. ENVIRONMENTAL PROTECTION

a. The Contractor agrees that its performance under this contract shall comply with:

(1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);

(2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;

(3) The Resources Conservation and Recovery Act (RCRA);

(4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);

(5) The National Environmental Policy Act (NEPA);

(6) The Solid Waste Disposal Act (SWDA);

(7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

(8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

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

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

5. USE OF UNITED STATES FLAG VESSELS

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

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. DEBARMENT AND SUSPENSION

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

7. BUY AMERICAN ACT

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

8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

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

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any

person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

Any Contract or subcontract in excess of $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Contractors that bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of

recovered materials identified in the EPA guidelines.

15. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.

Exhibit 2 to Attachment G – New Mexico Terms and Conditions

1. **Taxes:**

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

2. **Retainage.**

Reserved

3. **Performance Bond.**

Reserved

4. **Term:**

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

5. **Termination:**

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

uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

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

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

6. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance,

bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Conflict of Interest; Governmental Conduct Act:

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

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

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

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

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

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

9. Amendment:

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

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. Merger:

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

11. Penalties for violation of law:

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

12. Equal Opportunity Compliance:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin,

ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. Applicable Law:

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

15. Records and Financial Audit:

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

16. Invalid Term or Condition:

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

17. **Enforcement of Agreement:**

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

18. **Non-Collusion:**

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

19. **Notices:**

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

To the Procuring Agency:

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

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXX

20. **Succession:**

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

21. Headings:

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

22. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. Equitable Remedies:

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

24. New Mexico Employees Health Coverage:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

27. **Inspection of Plant:**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

28. **Commercial Warranty:**

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

29. **Condition of Proposed Items:**

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

30. Release:

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

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

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

33. **Incorporation by Reference and Precedence:**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is

derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.
In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the

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

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

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

36. Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.

b. Property damage or combined single limit coverage: $1,000,000.

c. Automobile liability (including non-owned automobile coverage): $1,000,000.

d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. **Arbitration:**

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

38. **New Mexico Administration Reporting and Fees:**

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies

and local public bodies. "**Gross total sales"** means any invoiced amount less any applicable state and local taxes.

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

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

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors

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

The Vendor shall indicate the contract number **SWPA #XX-00000-XX-XXXXX** on the remittance.

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

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

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

Exhibit 3 to Attachment G – Colorado Special Provisions (Colorado Fiscal Rule 3-3)

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

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

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

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

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

C. **GOVERNMENTAL IMMUNITY.**

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

D. **INDEPENDENT CONTRACTOR**

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

E. **COMPLIANCE WITH LAW.**

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

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

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall

be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. **PROHIBITED TERMS.**

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

H. **SOFTWARE PIRACY PROHIBITION.**

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

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

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

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

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

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and

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

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

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

ATTACHMENT C - PRICING

DEFINITIONS:
Good: bidders' smallest most basic model with no options (unless option is needed to meet the "Equipment Item" requirement).
Better: bidders' average, but not smallest, most basic model with no options (unless option is needed to meet the "Equipment Item" requirement).
Best: bidders' largest, most capable model with no options (unless option is needed to meet the "Equipment Item" requirement).
Equipment: includes the component(s) the bidder provides to install on chassis (provided by others).
Equipped Truck (Turn-key): includes the component(s) and chassis provided by the bidder as a fully functional operating unit for the task(s) it is intended to achieve.
Body: Relates to any item being purchased such as a dump box, plow, running boards, trailer, etc.

Evaluation of Cost Proposals: Specifications shall be reviewed and compared amongst bidders for the quality of the products offered. This would include the materials used, the quantity and quality of base items and options, and any additional features that demonstrate a superior product.
Besides Good/Better/Best equipment pricing, the bidders price sheet shall be evaluated. The bidder must demonstrate consistent overall value for all equipment pieces including the cost of parts, options, and attachments. In addition, options shall be evaluated for their overall selection.

The following items must be submitted with your bid for each product. Failure to do so may result in rejection of bid.
SUBMITTED WITH PRICING:
1) Complete equipment specifications
2) A description of product standard items and included option(s) specific to the product bid as "Good/Better/Best".
3) A list of available options and attachment(s) for each item bid, with line item pricing.
4) If applicable, the bidder shall submit their discounted catalog pricing pages for rentals and parts. Hourly labor rates for maintenance and repair service shall also be provided.

PRICING SUBMITTAL:
Provide pricing and specifications for "Good, Better, and Best" equipment listed below. If bidder has only one model that meets the requested listed item, that single model would be considered the bidders' submission for each "Good, Better, Best" price.

ADMINISTRATIVE FEES: Please refer to **Attachment A -NASPO ValuePoint Master Agreement Terms and Conditions section 6**, and **Attachment D section 2.**

AERIAL EQUIPMENT				PRICING												
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT ITEM	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Boom Cranes	Boom crane - insulated mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Bucket Equipment	Aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Digger Derricks	Digger derrick insulated, with 48" Auger mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Knuckle Booms	Knuckle Boom - insulated mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Truck Mounted Hydraulic Platforms	Aerial platform - Scissor lift mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

AERIAL TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK (REGULAR CAB)	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Boom Cranes	Turn-key **FORD** Truck with mounted boom crane - insulated	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted boom crane - insulated	Median reach available			BETTER												
		Longest reach available			BEST												
Bucket Equipment	Turn-key **FORD** Truck with aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to chassis.	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to chassis.	Median reach available			BETTER												
	Turn-key **FREIGHTLINER** Truck with aerial tower with Man-lift - insulated, telescopic articulating, over center, 2 man bucket mounted to chassis.	Longest reach available			BEST												
Digger Derricks	Turn-key **FORD** Truck with mounted digger derrick insulated, with 48" Auger	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted digger derrick insulated, with 48" Auger	Median reach available			BETTER												
		Longest reach available			BEST												
Knuckle Booms	Turn-key **FORD** Truck with mounted Knuckle Boom - insulated	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Knuckle Boom - insulated	Median reach available			BETTER												
		Longest reach available			BEST												
Truck Mounted Hydraulic Platforms	Turn-key **FORD** Truck with mounted aerial platform - Scissor lift.	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted aerial platform - Scissor lift.	Median reach available			BETTER												
		Longest reach available			BEST												

REFUSE EQUIPMENT				PRICING												
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Bodies - Refuse/Recycling	Container side, back, or Front loader mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Refuse/Recycling	Multi purpose refuse/recycling loader-hopper body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Refuse & Recycling Equipment	Refuse and Recycling body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Refuse truck Gripper System	Gripper System mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

Refuse Truck Lift System	Truck Lift System mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

REFUSE TURN-KEY TRUCKS						PRICING											
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Equipment Cost				Installation		Delivery Cost		TOTAL COST	Warranty Duration	Warranty Notes	Description
						Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile				NOTES
Trucks - Refuse Collection	Turn-Key Truck with refuse body (Rear Loader)	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Refuse Collection	Turn-Key Truck with refuse & recycling body (Side Loader)	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												

ROADWAY EQUIPMENT				PRICING										
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Equipment Cost				Installation		Delivery Cost		TOTAL COST	Warranty Duration	Warranty Notes	Description
				Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile				NOTES
Asphalt bodies	Asphalt Distributor mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt bodies	Live bottom body mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt bodies	Flusher/sprinkler body mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Hot Box Equipment	Asphalt recycler & hot box mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Patching Equipment	Pothole patcher mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Patching Equipment	Roll-off pothole patcher mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Sealing Equipment	Asphalt sealer mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Dump and Service	5 yard Dump Body mounted to Truck	Steel dump body	GOOD	NA											
		Aluminum dump body	BETTER	NA											
		Stainless steel dump body	BEST	NA											
Bodies - Road ditch maintenance	Road ditch maintenance auger system mounted to dump truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Van	Steel van service body	Shortest body available	GOOD	NA											
	Steel or aluminum van service body	Median body available	BETTER	NA											
	Aluminum van service body	Longest body available	BEST	NA											
Roll-off Cable Hoists	Roll-off cable hoist system mounted to truck	Shortest body available	GOOD	NA											
		Median body available	BETTER	NA											
		Longest body available	BEST	NA											
Hydro Excavating Equipment	Hydro excavator mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Liquid Management Solutions	Critical Spot Sprayer mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Lube Skids	Lube Skid mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Mechanics Equipment	Mechanic body with crane mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Street Sweepers	Sweeper body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

ROADWAY TURN-KEY TRUCKS						PRICING											
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Equipment Cost				Installation		Delivery Cost		TOTAL COST	Warranty Duration	Warranty Notes	Description
						Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile				NOTES
Trucks - Bodies	Turn-key **FORD** Truck with mounted 5 yard Dump Body	Steel dump body			GOOD												
	Turn-key **FORD** Truck with mounted 5 yard Dump Body	Aluminum dump body			BETTER												
	Turn-key **FREIGHTLINER** Truck with mounted 10 yard Dump Body	Stainless steel dump body			BEST												
Trucks - Roll-off Cable Hoists	Turn-key **FORD** Truck with roll-off cable hoist system mounted to truck	Shortest body available			GOOD												
	Turn-key **FREIGHTLINER** Truck with roll-off cable hoist system mounted to truck	Median body available			BETTER												
	Turn-key **FREIGHTLINER** Truck with roll-off cable hoist system mounted to truck	Longest body available			BEST												
Trucks - Catch Basin Cleaner	Turn-key **FREIGHTLINER** Truck with Catch Basin Cleaner	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Grease Disposal	Turn-key **FORD** Truck with mounted Tank and Vacuum Pump	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Tank and Vacuum Pump	Median size available			BETTER												
	Turn-key **FREIGHTLINER** Truck with mounted Tank and Vacuum Pump	Largest available			BEST												
Trucks - Hydraulic Hoist Tanks	Turn-key **FREIGHTLINER** Truck with mounted Tank equipped with Hydraulic Hoist	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Hydro Excavator	Turn-key **FREIGHTLINER** Truck with mounted Hydro Excavation body	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Loading	Turn-key **FORD** Truck with Loading/Grapple Equipment	Smallest available			GOOD												

	Turn-key **FREIGHTLINER** Truck with Loading/Grapple Equipment	Median size available			**BETTER**												
	Turn-key **FREIGHTLINER** Truck with Loading/Grapple Equipment	Largest available			**BEST**												
Trucks - Lube	Turn-key single axle **FORD** truck with Lube Body	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key single axle **FORD** truck with Lube Body	Best quality as specified.			**BETTER**												
	Turn-key double axle **FREIGHTLINER** truck with fuel tank and Lube Body	Best available as specified			**BEST**												
Trucks - Mechanics	Turn-key single axle **FORD** truck with Mechanic body including crane	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key single axle **FORD** truck with Mechanic body including crane	Best quality as specified.			**BETTER**												
	Turn-key double axle **FREIGHTLINER** truck with Mechanic body including hydraulic crane and hydraulic outriggers	Best available as specified			**BEST**												
Trucks - Road ditch maintenance	Turn-key **FORD** single axle dump truck with road ditch maintenance auger system	Good quality but budget driven. Smallest available, as specified			**GOOD**												
	Turn-key single axle **FREIGHTLINER** dump truck with road ditch maintenance auger system	Best quality, Median size available, as specified.			**BETTER**												
	Turn-key single axle **FREIGHTLINER** dump truck with road ditch maintenance auger system	Best and largest available as specified			**BEST**												
Trucks - Sweeper	Turn-key **FREIGHTLINER** Truck sweeper	Smallest available			**GOOD**												
		Median size available			**BETTER**												
		Largest available			**BEST**												
Trucks - Sweepers - Compact Outdoor	Turn-key compact vacuum sweeper - Closed cabin, lightweight sweeper for sidewalks and curbs	Smallest available			**GOOD**												
		Median size available			**BETTER**												
		Largest available			**BEST**												

SNOW & ICE EQUIPMENT				PRICING											
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	**EQUIPMENT**	**EQUIPMENT DETAILS**	**Equipment SPEC**	**Chassis**	**Body/part MSRP**	**% Discount**	**Discounted Cost**	**Cost**	**Hourly Rate**	**Point of Origin**	**Cost per mile**	**TOTAL COST**	**Warranty Duration**	**Warranty Notes**	**NOTES**
Airport Equipment	Snow plow mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Airport Equipment	Sweeper Broom mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Airport Equipment	Liquid system mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Pre-Wet Systems	Liquid de-icing system in dump body	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow & Ice Control Equipment	9'-6", 2-way snow plow mounted to front of pickup truck	as specified	**GOOD**	**NA**											
	9'-6", 2-way snow plow mounted to front of pickup truck with removable mounts	as specified	**BETTER**	**NA**											
	9'-6", 4-way snow plow mounted to front of pickup truck with removable mounts	as specified	**BEST**	**NA**											
Snow & Ice Control Equipment (Municipal)	Liquid system mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow Blowers	Snow blower - Loader Mounted	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow Removal Equipment	12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Good quality but budget driven. As specified.	**GOOD**	**NA**											
	12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Best quality as specified.	**BETTER**	**NA**											
	12' straight front plow with right hand discharge, left & right 9' side-wings and underbody blade, plus 10 yard dump body with slide in salt/sand spreader mounted to double axle truck.	Best available	**BEST**	**NA**											
Specialty Vehicles	Towable Snowplow 12' single directional	as specified	**GOOD**	**NA**											
	Towable Snowplow 12' bi-directional	as specified	**BETTER**	**NA**											
	Towable Snowplow 12' bi-directional with salt delivery system	as specified	**BEST**	**NA**											
Spreaders - Deicing	Salt/Sand spreader mounted to pickup truck with 8' bed	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Spreaders - Deicing	Slide-in salt/sand spreader for 3 yard municipal dump body	as specified	**GOOD**	**NA**											
	Slide-in salt/sand spreader for 5 yard municipal dump body	as specified	**BETTER**	**NA**											
	Slide-in salt/sand spreader for 10 yard municipal dump body	as specified	**BEST**	**NA**											
OTHER		Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											

SNOW & ICE TURN-KEY TRUCKS						PRICING										
						Equipment Cost				Installation		Delivery Cost				Description
CATEGORY	**EQUIPPED TRUCK**	**EQUIPMENT DETAILS**	**CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT**	**CHASSIS GVWR, WHEELBASE & CAB TO AXLE**	**Equipment SPEC**	**Chassis**	**Body/part MSRP**	**% Discount**	**Discounted Cost**	**Cost**	**Hourly Rate**	**Point of Origin**	**Cost per mile**	**TOTAL COST**	**Warranty Duration**	**Warranty Notes**	**NOTES**
Trucks - - Municipal Snowplow/deicing	Turn-key **FREIGHTLINER** Truck with 12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key **WESTERN STAR** Truck with 12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Best quality as specified.			**BETTER**												
	Turn-key **WESTERN STAR** Truck with 12' straight front plow with right hand discharge, left & right 9' side-wings and underbody blade, plus 10 yard dump body with slide in salt/sand spreader mounted to double axle truck.	Best available as specified			**BEST**												
Trucks - Airport Equipment	Turn-key truck with liquid de-icing system	Smallest available			**GOOD**												
		In-between size available			**BETTER**												
		Largest available			**BEST**												
Trucks - Airport Equipment	Turn-key truck with front and side wing snow plow and liquid deicing system	Smallest available			**GOOD**												
		In-between size available			**BETTER**												

	liquid deicing system	Largest available			BEST												
Trucks - Airport Equipment	Turn-key truck with sweeper Broom	Smallest available			GOOD												
		In-between size available			BETTER												
		Largest available			BEST												

VACUUM/SEWER EQUIPMENT				PRICING											
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Industrial Vacuum	Vacuum Tank with flushing equipment mounted on truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Sewer	Sewer cleaner body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Vacuum	Catch basin cleaner mounted to trunk	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Vacuum Excavator	Vacuum excavator body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Water Recycling	Water recycling body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

VACUUM/SEWER TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Trucks - Industrial Vacuum	Turn-key **FORD** Truck with mounted Vacuum Tank and Flushing Equipment	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Vacuum Tank and Flushing Equipment	Median size available			BETTER												
		Largest available			BEST												
Trucks - Sewer	Turn-key **FORD** Truck with sewer cleaner	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with sewer cleaner	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum	Turn-key **FORD** vacuum catch basin cleaner truck	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** vacuum catch basin cleaner truck	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum - Litter Vehicles	Turn-key **FORD** truck vacuum debris collector	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** truck vacuum debris collector	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum Excavator	Turn-key **FORD** Truck vacuum excavator	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck vacuum excavator	Median size available			BETTER												
		Largest available			BEST												
Trucks - Water Recycling	Turn-key **FORD** Truck water recycling	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck water recycling	Median size available			BETTER												
		Largest available			BEST												

STATE OF MICHIGAN

Request for Proposal No. 210000000535

NASPO ValuePoint Master Agreement for
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

January 24, 2023

Addendum #2

Please take note of the following changes:

A. **Proposal Instructions (Re-Issued):** RFP has been extended (see section 1.3 Schedule of Events below). In addition, a second pre-bid meeting has been scheduled (see section 2.4 Pre-Proposal Conference #2 below)

1.3 Schedule of Events

Solicitation Release:	**January 4, 2023**
Pre-Proposal Conference #1:	**January 17, 2023 at 1:00 pm Eastern (13 days)**
Pre-Proposal Conference #2:	**February 21, 2023 at 1:00 pm Eastern (35 days)**
Question Deadline:	**March 27, 2023 at 3:00 pm (34 days)**
Closing Date and Time:	**April 27, 2023 3:00 pm (31 days)**
Anticipated Award Date:	**July 20, 2023 (84 days)**

All times are Eastern time unless indicated otherwise.

2.4 Pre-Proposal Conference #2 (Optional)

A pre-proposal conference will be held on **February 21, 2023, at 1:00 pm Eastern**, remotely via **Microsoft Teams**:

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 229 148 109 440
Passcode: HT9FKc
Download Teams | Join on the web
Or call in (audio only)
+1 248-509-0316,,34912860# United States, Pontiac
Phone Conference ID: 349 128 60#
Find a local number | Reset PIN
Learn More | Meeting options

Attendance at the conference is optional. Statements made by the solicitation manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the solicitation manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document.

B. **Attachment G – Potential Participation Information (Re-Issued):** The State of Vermont is added.

STATE OF MICHIGAN
PROCUREMENT
Michigan.gov/MiProcurement

The State of Michigan
DTMB Central Purchasing

In conjunction with

NASPO ValuePoint®

Request for Proposals

Michigan Solicitation Number 210000000535

NASPO ValuePoint Master Agreement for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services AD2

January 4, 2023

About NASPO ValuePoint
NASPO ValuePoint is the cooperative purchasing division of the National Association of State Procurement Officials (NASPO), facilitating cooperative public procurement solicitations using a Lead State model.

About NASPO
The National Association of State Procurement Officials (NASPO) is a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States.

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Attachment G Potential Participation Information

Exhibit 1 to Attachment G Additional Participating States' Terms and Conditions

RFP Administrative Information

RFP Title:	Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services
RFP Project Description: (See Section 1.1)	The State of Michigan, in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide truck bodies, turnkey trucks and all associated equipment and services needed to complete the requirements of this solicitation.
RFP Lead: (See Section 1.2)	Yvon Dufour DTMB Central Procurement 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 249-0455
Submit electronically via www.michigan.gov/SIGMAVSS: (See Section 2.10)	Electronic Submission www.michigan.gov/SIGMAVSS
Pre-Proposal Conference #1: Pre-Proposal Conference #2: Pre-Proposal Conference Location: (See Section 2.4)	**1- January 17, 2023 (Tuesday) 1:00 pm Eastern** **2- February 21, 2023 (Tuesday) 1:00 pm Eastern** Microsoft Teams Meeting – see Section 2.4 for Details
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	**March 27, 2023 (Monday), 3:00 pm Eastern**
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted via email to dufoury@michigan.gov. Questions must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.3)	**April 27, 2023 (Thursday)**
RFP Closing Time: (See Section 1.3)	3:00 pm Eastern
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be three (3) years with the option, upon mutual written agreement, for two (2) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSAL
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

Solicitation # 210000000535

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Michigan (Lead State), Department of Technology, Management and Budget, Central Purchasing Division is requesting proposals for Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services in furtherance of NASPO Value Point's Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide truck bodies, seasonal maintenance equipment, & upfitting services for purchase and/or rental, parts, maintenance & repairs for Participating States.

Subject to the Lead State's sole discretion, this RFP may result in Master Agreement awards to a single, or multiple contractors.

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

This will be a new Master Agreement portfolio for the State of Michigan and NASPO ValuePoint.

1.2. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Michigan Department of Technology, Management and Budget, Central Purchasing Division is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is **Solicitation # 210000000535**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand

approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division is:

Yvon Dufour, Category Specialist
State of Michigan, DTMB, Central Purchasing Division
320 South Walnut
Elliott-Larsen Building, 2nd Floor N
Lansing, MI 48909
dufoury@michigan.gov
(517) 249-0455 Fax (517) 335-0046

1.3 Schedule of Events

Solicitation Release:	**January 4, 2023**
Pre-Proposal Conference #1:	**January 17, 2023 at 1:00 pm Eastern (13 days)**
Pre-Proposal Conference #2:	**February 21, 2023 at 1:00 pm Eastern (35 days)**
Question Deadline:	**March 27, 2023 at 3:00 pm (34 days)**
Closing Date and Time:	**April 27, 2023 3:00 pm (31 days)**
Anticipated Award Date:	**July 20, 2023 (84 days)**

All times are Eastern time unless indicated otherwise.

1.4. Definitions

The following definitions apply to this solicitation. The NASPO ValuePoint Master Agreement terms and conditions (Attachment A) and the Lead State Terms and Michigan Participating Addendum (Attachment G) also contain definitions of terms used in this solicitation.

Bidder means the company or firm who submits a proposal in response to this Request for Proposal.

Contract Administrator The person who is the single point of contact for this RFP on behalf of the Lead State and NASPO.

Contractor For the purposes of this RFP, means the successful Bidder who is awarded a Contract for providing all equipment and services described in the Contract documents.

Distributer (Dealer) Agreement document that identifies a manufacturer's independent dealer for services provided within the scope of this RFP.

Lead State means the State conducting this cooperative procurement, evaluation, and award.

Master Agreement(s) means the underlying agreement executed by and between the Lead State, acting in collaboration with the NASPO ValuePoint program, and the successful Contractor(s).

Offeror has the same meaning as Bidder.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating the Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions. The Lead State Terms and Conditions are also a Participating Addendum.

Proposer has the same meaning as Bidder.

Proposal means the official written response submitted by an Offeror in response to this Request for Proposal.

Request for Proposal or "RFP" means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

Supplier is any manufacturer, distributor, company, or any other entity providing units, components or subassemblies for inclusion in the final equipment item(s) described in the contract documents.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company dedicated to strengthening the procurement community through education, research, and communication. NASPO is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the 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. For more information consult the following websites: www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

The Lead State Terms and Conditions are located in Attachment F. In addition to the Lead State conducting this solicitation, states that have requested to be named in this RFP as potential users of the resulting Master Agreement are identified in Attachment G. This list neither guarantees participation by named states nor excludes participation by states or other entities that are not named. Participation will be determined on a state-by-state basis following execution of Master Agreement(s).

Some of the states listed in Attachment G may have included special or unique terms and conditions for their state that will govern their state's Participating Addendum in Attachment G. These terms and conditions are being provided as a courtesy to Proposers to indicate which additional terms and conditions may be incorporated into the state's Participating Addendum after award of the Master Agreement.

The Lead State will not address questions or concerns or negotiate any other Participating State's terms and conditions. The Participating States shall negotiate these terms and conditions directly with the Contractor. Any terms that may be contained in Attachment G are expressly excluded from incorporation into any resulting contract with the Lead State.

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Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1 Proposal Preparation

The Lead State recommends reading **all** RFP materials prior to preparing a proposal. Bidders must follow all instructions herein and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the Bidder's company name in the header of all documents submitted with your proposal.

RFP Structure and Documentation

Document	Description	Bidder Response Instructions
Executive Summary	Description of the Offeror's Proposal. Outlines major features of the Proposal. Should include requirements that cannot be met.	Bidder to complete and submit by proposal deadline
Request for Proposal	Provides RFP information and instructions to Bidders	Informational
Confidential Treatment Form	Required verification on whether Bidder's proposal contains confidential information	Bidder to complete and submit by proposal deadline

Document	Description	Bidder Response Instructions
Vendor Questions Worksheet	Questions to Bidders on background and experience	Bidder to complete and submit by proposal deadline
Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions	Provides general NASPO ValuePoint legal terms and conditions for a contract awarded through this RFP which are applicable unless superseded by terms contained within an applicable Participating Addendum	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment B – Statement of Work	Statement of work	Bidder to complete and submit by proposal deadline
Attachment C – Pricing	Pricing for goods and services sought through this RFP	Bidder to complete and submit by proposal deadline
Attachment D – RFP Evaluation Scoresheet	Evaluation criteria	Informational
Attachment E – Distributer/Dealer Agreement	Used for Manufacturers Independent Dealers (If applicable)	Informational
Attachment F – Lead State Terms and Michigan Participating Addendum	Provides legal terms for a contract with the Lead State of Michigan, as awarded through this RFP	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment G– Participating States	Provides a list of States interested in executing a contract(s) with awarded Contractors	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Contract
Exhibit 1 to Attachment G – Participating States' Legal Terms	Provides legal terms that may apply to a contract awarded through this RFP by Participating States, other than the Lead State	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Master Agreement

2.2 RFP Question and Answer Process

Bidder questions about this RFP, including those about Terms and Conditions contained in Attachments A and G, must be emailed to the solicitation manager dufoury@michigan.gov no later than the time and date specified on the Cover Page. In the interest of transparency, only written questions are accepted.

The Lead State may refuse to answer questions received after the Question/Answer deadline.

Answers to questions will be posted on www.michigan.gov/SIGMAVSS. Submit questions using the format below; a Microsoft Excel format or similar is suggested.

Q #	Document and Section	Page #	Bidder Question

The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, so Offerors are cautioned about including context in questions that may reveal the source of questions.

2.3 RFP Modifications

Changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via written addenda issued by the Lead State.

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor www.michigan.gov/SIGMAVSS to obtain RFP addenda or other information relating to the RFP.

2.4 Pre-Proposal Conference #2 (Optional)

A pre-proposal conference will be held on **February 21, 2023, at 1:00 pm Eastern**, remotely via **Microsoft Teams**:

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 229 148 109 440
Passcode: HT9FKc
Download Teams | Join on the web
Or call in (audio only)
+1 248-509-0316,,34912860# United States, Pontiac
Phone Conference ID: 349 128 60#
Find a local number | Reset PIN
Learn More | Meeting options

Attendance at the conference is optional. Statements made by the solicitation manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the solicitation manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document.

2.5 Proposal Due Date

Proposals must be received by the posted Closing date and time as described in the **Schedule of Events in Section 1.3** of this RFP. Proposals received after the deadline will be late and rejected.

2.6 Cancellation of Procurement

This RFP may be canceled at any time prior to award of the Master Agreement(s) if the Lead State determines, in its sole discretion, such action to be in the best interests of Participating States.

2.7 Governing Laws and Regulations

This procurement is conducted by the Lead State, Michigan, in accordance with the Michigan's Procurement Code, available at https://www.michigan.gov/documents/dmb/0510_182349_7.pdf

This procurement shall be governed by the regulations and laws of Michigan. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Michigan. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in **section 33** of the **NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.**

2.8 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date, after which time the Bidder will have the option to revoke any offers made through their response by providing written notice of revocation to the Lead State.

2.9 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the Lead State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. In the event that the Offeror so restricts its Proposal, the Lead State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the Lead State and the NASPO ValuePoint cooperative program. The Lead State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

2.10 Proposal Content and Format Requirements

Proposals must be detailed and concise. Most Proposal documents are provided in this RFP for the Proposers to complete and submit back to the Lead State **(See Bidder Response Checklist in this section, item 2.12 Required Format).** Each Proposal must be labeled and organized in a manner that is congruent with the requirements and

terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Statement of Work elements.

2.11 Proposal Submission Instructions

Electronic – The Bidder must submit its proposal, all attachments, and any modifications or withdrawals electronically through www.michigan.gov/SIGMAVSS. The price proposal should be saved separately from all other proposal documents. Attachment file size is limited to 6 MB per document. Bidder's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal**, as the SIGMA VSS system requires the creation of an account and entry of certain information, in addition to uploading and submitting the materials. The SIGMA VSS system **will not** allow a proposal to be submitted after the proposal deadline identified in the solicitation Closing On/Closing Date fields (Summary view/Detail view), even if a portion of the proposal has been uploaded.

Questions on how to submit information or how to navigate in the SIGMA VSS system can be answered by calling **(517) 284-0540 or (888) 734-9749**. The solicitation manager will not provide assistance related to the submittal of the proposal and all attachments on the day of the proposal deadline. Responsibility for a complete submission lies with the Bidder.

2.12 Required Format

The Bidder should submit all documents in the format indicated in the table below. Attachment file size is limited to 6 MB per document.

BIDDER RESPONSE CHECKLIST		
Document		**Bidder Response Instructions**
1.	**Executive Summary**	Submit as Microsoft Word or PDF document.
2.	**Confidential Treatment Form**	Submit as Microsoft Word document.
3.	**Vendor Questions Worksheet**	Submit as Microsoft Word document.
4.	**Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions**	Submit in redlined format only if not accepted as written. Microsoft Word document.
5.	**Attachment B – Statement of Work**	Submit as Microsoft Word document.
6.	**Attachment C – Pricing**	Submit as Microsoft Excel document.

7.	**Attachment F – Lead State Terms and Michigan Participating Addendum**	Submit in redlined format only if not accepted as written. Microsoft Word document.
8.	**Product Specifications**	Submit as Microsoft Word or PDF document.
9.	**Dealer list (if applicable)**	Submit as Microsoft Excel document.
10.	**Complete Price List (should include all products and all their options and attachments)**	Submit as Microsoft Excel document.
11.	**Certified letter from each participating manufacturer(s) (See Attachment B, section B1.6 Contractual Solutions if applicable)**	Submit as Microsoft Word or PDF document.

2.13 Ownership or Disposition of Proposals and other Materials submitted.

All proposals shall be stored and disposed of electronically according to the applicable State of Michigan policy regarding retention period requirements.

2.14 Confidential Treatment Form and The Freedom of Information Act

All portions of the Bidder's proposal and resulting contract are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231, et seq. However, some information may be exempt from disclosure. Under MCL 18.1261(13)(b), records containing "a trade secret as defined under section 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902," are exempt from disclosure under FOIA. In addition, "financial or proprietary information" submitted with a Bidder's proposal is exempt from disclosure under FOIA. A Bidder's failure to comply with this Section is grounds for rejecting a Bidder's proposal as non-responsive. As a part of its proposal, each Bidder must follow the procedure below.

Submit a Completed "Confidential Treatment Form" (CT Form) With Your Bid. Completion and submission of the CT Form is required regardless of whether the Bidder seeks confidential treatment of information. Failure to submit a completed CT Form may be cause for disqualification from the solicitation process.

i. Complete and sign Section 1 of the CT Form if the Bidder does NOT request confidential treatment of information contained in its proposal; or

ii. Complete and sign Section 2 of the CT Form if the Bidder requests confidential treatment of certain information. Bidder must also submit a "Public Copy" of the proposal with the trade secret, financial, and proprietary information redacted and clearly labeled as the "Public Copy."

FOIA Requests. If a FOIA request is made for a Bidder's proposal, the Public Copy may be distributed to the public along with the Bidder's CT Form. The CT Form is a public document and serves as an explanation for the redactions to the Public Copy. Do

not put any trade secret, financial, or proprietary information in the CT Form. Do not redact the CT Form itself.

No Advice. The Lead State will not advise a Bidder as to the nature or content of documents entitled to protection from disclosure under FOIA or other laws, as to the interpretation of such laws, or as to the definition of trade secret or financial or proprietary information. Nothing contained in this provision will modify or amend requirements and obligations imposed on the Lead State by FOIA or other applicable law.

Failure To Request Confidential Treatment. Failure to request material be treated as confidential as specified herein relieves the Lead State, its agencies, and personnel from any responsibility for maintaining material in confidence.

Bids containing a request to maintain an entire proposal as confidential may be rejected as non-responsive. Bidders may not request confidential treatment with respect to resumes, pricing, and marketing materials. The Lead State reserves the right to determine whether material designated as exempt by a Bidder falls under MCL 18.1261 or other applicable FOIA exemptions. If a FOIA request is made for materials that the Bidder has identified as trade secret, financial, or proprietary information, the Lead State has the final authority to determine whether the materials are exempt from disclosure under FOIA.

Bidder forever releases the Lead State, NASPO, its departments, subdivisions, officers, and employees from all claims, rights, actions, demands, damages, liabilities, expenses and fees, which arise out of or relate to the disclosure of all or a portion of Bidder's proposal submitted under this RFP. Bidder must defend, indemnify and hold the Lead State and NASPO as well as their departments, subdivisions, officers, and employees harmless, without limitation, from and against all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to any FOIA request, including potential litigation and appeals, related to the portion of Bidder's proposal submitted under this RFP that Bidder has identified as a trade secret, or financial or proprietary information. The Lead State will notify Bidder in writing if indemnification is sought. The Lead State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, or any portion thereof, if the Lead State deems necessary. Bidder will not, without the Lead State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. If a Lead State employee, official, or law is involved or challenged, the Lead State may control the defense of that portion of the claim. Any litigation activity on behalf of the Lead State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the Lead State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

2.15 Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to the Lead State Terms and Conditions included in **Attachment F**, and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its sourcing team), the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception and would require a substantial proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language, or any other document contained within this RFP through their written inquiries about the RFP using the process in **Section 2.2**.

Moreover, Offerors are cautioned that award may be made on receipt of initial proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated. Further, the nature of exceptions will be considered in the competitive range determination if one is conducted. In the sole discretion of the Lead State, exceptions may be evaluated to determine: the extent to which the alternative language or approach poses unreasonable, additional risk to the state; is judged to inhibit achieving the objectives of the RFP; or whose ambiguity makes evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP. Exceptions may result in a Proposal being rejected as nonresponsive and the Lead State is under no obligation to consider exceptions.

CONFIDENTIAL TREATMENT FORM

INSTRUCTIONS. Complete either *Section 1* or *Section 2* of this CT Form and sign where indicated. This CT Form must be signed by the individual who signed the Bidder's proposal. A completed CT Form must be submitted with your proposal, regardless of whether your proposal contains confidential information.

Failure to submit a completed CT Form with your bid is grounds for rejecting the proposal as non-responsive. See the **Confidential Treatment Form** and **The Freedom of Information Act** (FOIA) sections of the *Proposal Instructions* for additional information.

Section 1. CONFIDENTIAL TREATMENT IS NOT REQUESTED

This section must be completed, signed, and submitted with the proposal if the Bidder does **not** request confidential treatment of any material contained in the proposal.

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is not requested.

RFP Number	RFP Title
Signature	Date

Printed Name, Title, Company

CONFIDENTIAL TREATMENT FORM

Section 2. CONFIDENTIAL TREATMENT IS REQUESTED

This section must be completed, signed, and submitted with the proposal if Bidder requests confidential treatment of any material contained in the proposal. Submission of a completed CT Form is required to request confidential treatment.

Provide the information in the table below. Bidder may add rows or additional pages using the same format shown in the table. Bidder must specifically identify the information to be protected as confidential and state the reasons why protection is necessary.

The CT Form will not be considered fully complete unless, for each confidentiality request, the Bidder: (1) Identifies the Proposal Page #, Section #, and Paragraph #, (2) Identifies whether the material is a Trade Secret (TS), Proprietary Financial Information (FI), or Proprietary Information (PI), (3) Explains the specific legal grounds that support treatment of the material as TS, FI, or PI. Bidders must provide a complete justification as to how the material falls within the scope of an applicable FOIA Exemption or relevant case law. Bidders must not simply cite to an applicable exemption or case name, and (4) Provides the contact information for the person at Bidder's organization authorized to respond to inquiries by the State concerning the material.

(1) Proposal Page #, Section #, Paragraph #	(2) Material is Trade Secret (TS), Proprietary Financial Information (FI), Proprietary Information (PI)	(3) Applicable FOIA Exemption with Written Justification	(4) Bidder Contact Information

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is requested and has attached to this form a redacted "Public Copy" of the Bidder's proposal.

RFP Number

RFP Title

Signature

Date

Printed Name, Title, Company

Section 3: Evaluation and Award

3.1 Right to Waive Minor Irregularities

3.1.1 Notice of Deficiency. The Lead State reserves the right to issue a **Notice of Deficiency** to all active Bidders, if the State determines after the proposal deadline that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a **Notice of Deficiency** timely may be cause for disqualification.

3.1.2 Clarification Request. The Lead State reserves the right to issue a **Clarification Request** to an individual requesting Bidder by email to clarify its proposal if the Lead State determines the proposal is not clear. Failure to respond to a **Clarification Request** timely may be cause for disqualification.

3.1.3 Reservations. The Lead State reserves the right to:

- **a)** Disqualify a Bidder for failure to follow these instructions.
- **b)** Discontinue the RFP process or cancel the Solicitation entirely at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the Lead State's subsequent receipt and evaluation of your proposal does not commit the Lead State to award a contract to you or anyone, even if all the requirements in the RFP are met.
- **c)** Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the Lead State received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
- **d)** Consider an otherwise disqualified proposal if no other proposals are received.
- **e)** Disqualify a proposal based on: (i) information provided by the Bidder in response to this RFP; (2) the Bidder's failure to complete registration on www.michigan.gov/SIGMAVSS ; or (3) if it is determined that a Bidder purposely or willfully submitted false or misleading information in response to the RFP.
- **f)** Consider prior performance with the Lead State in making its award decision.
- **g)** Consider overall economic impact to the Lead State when evaluating proposal pricing and in the final award recommendation. This includes but is not limited to: considering principal place of performance, number of Lead State citizens employed or potentially employed, dollars paid to Lead State residents, Lead State capital investments, job creation, tax revenue implications, and economically disadvantaged businesses.
- **h)** Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award recommendation.
- **i)** Refuse to award a contract to any Bidder that has failed to pay Lead State taxes or has outstanding debt with the Lead State.

j) Enter into negotiations with one or more Bidders on price, terms, technical requirements, or other deliverables.

k) Award multiple, optional-use contracts, or award by Contract Activity.

l) Evaluate the proposal outside the scope identified in the Evaluation Process section of this document if the State receives only one proposal.

3.2 Discussions with Offerors – Oral Presentations

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The Lead State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

The Lead State may, but is not required to, conduct an on-site visit to tour and inspect the Bidder's facilities; require an oral presentation of the Bidder's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process.

3.3 Award of Master Agreement(s)

Award shall be made to the responsive and responsible Offeror(s) whose proposal is the most advantageous to Michigan and the NASPO ValuePoint cooperative program, taking into consideration price and the best combination of the factors stated in section **3.4 Evaluation Process**. This solicitation is intended to provide multiple contract awards in various categories. The Lead State will post an **Award Recommendation and Evaluation Synopsis** on www.michigan.gov/SIGMAVSS.

3.4 Evaluation Process

Phase 1 – Mandatory Minimum Requirements: In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

1. The Proposer must be a manufacturer or a Supplier authorized by the manufacturer to distribute the products they are offering. (Pass/Fail)

2. The Proposer must agree, if awarded a contract, that all "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. (Pass/Fail)

Phase 2: Technical Proposal Evaluation (100 points)

Evaluation Criteria (NOTE: The Lead State and NASPO reserve the right to use related Bidder responses from other sections of the RFP that are applicable to each section below)	Possible Points
Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function.* ***(If applicable, section B2. and B3. shall be scored separately)***	40 pts
Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 pts
Agreement with Lead State Terms and Conditions in Attachment F *Vendor Questions Worksheet Section 9*	15 pts
Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 pts
References: *Vendor Questions Worksheet Section 8*	15 pts
Total Technical Points	100 pts

Proposals receiving **80** or more technical evaluation points will have pricing evaluated and considered for award. See **Attachment D** – RFP Evaluation Scoresheet.

The Lead State may utilize all Bidder information, without regard to a proposal's technical score, to determine fair market value for goods or services sought. The Lead State is not obligated to accept the lowest price proposal. If applicable, the Lead State's evaluation will include consideration of a Bidder's qualified disabled veterans/service-disabled veteran owned business(QDV/SDVOB) status under MCL 18.1261(8). Additional information on the SDVOB preference is available at: Michigan.gov/SDVOB.

The Lead State strongly encourages strict adherence to the Lead State Terms and Conditions. The Lead State reserves the right to deem a bid non-responsive for failure to accept the Lead State Terms and Conditions. Nevertheless, the Bidder may submit proposed changes to the Lead State Terms and Conditions in track changes (i.e., visible edits) with an explanation of the Bidder's need for each proposed change. Failure to include track changes with an explanation of the Bidder's need for the proposed change constitutes the Bidder's acceptance of the Lead State Terms and Conditions. General statements, such as that the Bidder reserves the right to negotiate the terms and conditions, may be considered non-responsive.

3.5 Notice of Intent to Award

After a final selection(s) is made, the Lead State will issue an intent-to-award announcement on www.michigan.gov/SIGMAVSS, its electronic procurement system. Proposal files are public records and available for review at the offices of the Lead State by appointment.

3.6 Debrief Meeting and Bid Protest

The Lead State will post an ***Award Recommendation and Evaluation Synopsis*** which will provide instructions on how to request a debrief meeting.

If you wish to initiate a protest of the award, you must submit your written protest electronically at BidProtest-DTMB@michigan.gov no later than 3:00 pm Eastern, 5 calendar days after posting the ***Award Recommendation and Evaluation Synopsis*** on SIGMA VSS, or by 12:00 pm Eastern, the next business day if that date falls on a state holiday or weekend. The Lead State reserves the right to adjust this timing and will publish any change on the SIGMA VSS.

Additional information about the protest process is available at www.michigan.gov/micontractconnect under the “Programs and Policies” link.

3.7 Post Award Formalization of the Master Agreement

The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State’s judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating States, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Offerors or elect to make no award under this RFP.

3.8 Lead State Administrative Board

Contracts equal to or greater than $250,000 require approval by Michigan’s State Administrative Board. The State Administrative Board’s decision is final; however, its approval does not constitute a contract. The award process is not complete until the awarded contractor receives a contract fully executed by all parties.

Section 4: Administrative and Technical Response Requirements

4.1 Mandatory Minimum Administrative Proposal Requirements

This section contains the minimum requirements that must be met in order to be considered for the evaluation phase. All of the items described in this section are non-negotiable. All Offerors must state willingness and demonstrate ability to satisfy these requirements in the proposal submitted for consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

- Bidder must be the manufacturer or be authorized by the manufacturer to distribute the products they are offering.
- If a Bidder is only authorized to sell a product in a specific region, that Bidder must indicate which states they are authorized to distribute the product(s).
- All **"catalog"** pricing must be published and available at all times during the term of the Contract via website access, and/or electronic/printed price pages.

4.2 NASPO ValuePoint Master Agreement Statement of Compliance

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the **NASPO ValuePoint Standard Terms and Conditions (Attachment A)** and **Lead State Terms and Conditions (Attachment F)** required to execute a master agreement, the **Statement of Work (Attachment B)** and selected portions of the Offeror's Proposal.

Offeror must include a statement in **Section 9 of "Vendor Questions Worksheet"** that they have read and understand all of the terms and conditions as shown in the **NASPO ValuePoint Terms and Conditions (Attachment A).**

4.2.a Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in the Lead State at the prescribed levels set forth in Section 5 of **Attachment F.** The Offeror shall indicate agreement with the insurance requirements for this RFP in **section 10 of the Vendor Questions Worksheet**.

4.2.b NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in **Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A)**. Moreover, specific summary and detailed usage reporting requirements are prescribed by **Section 7 of the NASPO ValuePoint Master**

Agreement Terms and Conditions (Attachment A).

4.2.c Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. Technical and management evaluation factors may include evaluation of: the likely effectiveness of the Offeror's promotion of the Master Agreement; the Offeror's understanding of and approach to administration of and reporting under the Master Agreement; the risk that Offeror's contractual obligations to other procurement cooperatives' may impede achievement of the objectives of the ValuePoint cooperative procurement program, in which case awards could be Lead-State-Only awards. In this regard, the Proposer must complete **Section 5 of the Vendor Questions Worksheet**.

4.2.d Usage Fee and Reporting Plan

Offerors shall include in their proposals a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately. Requirements for Lead State are included in **Attachment F.**

4.3 Lead State Terms and Conditions

Refer to **Attachment F** for the Lead State Terms and Conditions that apply to this solicitation. Offeror shall indicate in their Proposal that they have read and understand all of the requirements shown in the Lead State Terms and Conditions.

4.4 Participating State Terms and Conditions

For informational purposes only, some Participating State specific Terms and Conditions are provided in Attachments to this solicitation 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. Offeror shall note in section 9. of the Vendor Questions Worksheet, that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

4.5 Technical Requirements

Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. When completing the applicable sections of this RFP, the Offeror must identify in their Proposal how their company meets (or exceeds) all requirements.

4.5.1 Statement of Work

Offeror shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the **Statement of Work** in **Attachment B**. Offeror shall show each requirement and their response in their Proposal.

4.6 VENDOR QUESTIONS WORKSHEET

Provide a detailed response to each question. “You” and “company” refers to the Proposer.

Information Sought	Bidder Response
1. Contact Information	
Bidder’s sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, phone number and vendor customer code in SIGMA VSS.	
2. Company Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Phone number.	
Website address.	
Number of years in business and number of employees.	
Legal business name and address of parent company, if any.	
Your client retention rate during the past 3 years.	
Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
Discuss your company’s history. Has growth been organic, through mergers and acquisitions, or both?	
Has Bidder ever been debarred, suspended, or disqualified from bidding or contracting with any governmental entity, including without limitation the State of Michigan? If yes, provide the date, the entity, and details about the situation.	

Has your company been a party to litigation against the Lead State or any other state or U.S. territory? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction	
Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
State your gross annual sales for each of the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	
Describe partnerships and strategic relationships you think will bring significant value to the State and/or Participating Entities.	
State the physical address of the place of business that would have primary responsibility for this account if Bidder is awarded a contract under this RFP.	
3. Customer Service & Proposer's Ability to Provide Nationwide Sales, Delivery, & Service	
What are your hours of operation and when are key account people available to us?	
Describe how problem identification and resolution will be handled.	
How will you service Lead State's account? Describe the system you will use to manage Lead State's account. Describe the system you will use to manage other state's or U.S. territory's account(s), if different. If the same, please indicate as much.	
How do you respond to customer complaints and service issues?	

Have you ever had a recall situation for any of your equipment/products; and if yes, approximately how much of an impact was it to the company to repair/replace the equipment?	
How do you assess customer satisfaction?	
What are your quality assurance measures and how are they handled in your organization?	
How long does it take to produce a typical piece of equipment (base model, not special order)?	
Are all of your most popular equipment/products (base model, not special order) maintained in inventory?	
Do you, the manufacturer, or your dealers in your network offer any value-added incentives to purchase, such as seasonal sales, and if so, how would you incorporate special sale situations in the contract?	
Is your dealer network in every state in the U.S. and U.S. Territories? If no, where are you lacking coverage?	
Describe how your dealers are chosen.	
Describe any mandatory training for your dealers that is required to maintain authorization of their distribution privileges.	
Are your dealers considered employees or independently owned businesses?	
Does one or more of your employees check-in with your dealers for purposes of auditing, inspection of premises, reporting procedures, or other on a regular basis?	
If your dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports.	
If payment is made to your independently owned dealer for your equipment/product(s), how is that addressed in your company's policies?	

Do you offer extended warranties for your products? If yes, explain your extended warranties and provide the terms of your extended warranty plans. Also, will you offer discounts on your extended warranties?	
Describe your system that Purchasing Entities would use to place orders and receive results. Include all methods of order submission.	
Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.	
What measures do you take to protect sensitive customer information?	
Describe any product, equipment, maintenance, or operator training programs that you provide as part of any resulting contract. Please include details, such as whether training is standard or optional, who provides training, and any costs that apply.	
Describe your company's capability to meet the needs of the Lead State and other NASPO members across the country. Your response should address at least the following areas: - Sales Capabilities - Dealer Network or other means of distribution (If applicable, provide Dealer List) - Service Capabilities Please include details, such as the locations of your network of sales and service providers, the number of workers (full- time equivalents) involved in each sector, whether these workers are your direct employers (or employees of a third party), and any overlap between the sales and service functions.	
Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract.	
If any, please describe any specific contract requirements or restrictions that would be applicable only to NASPO Members outside of the contiguous US states, such as Hawaii, Alaska, and/or any US Territories.	

If you are awarded a contract, how will you train your sales management, dealer network, and direct sales teams (whichever apply) to support the customers of the resulting contract? Please include how you will provide sales and support coverage for customers nationally.	
4. Industry Recognition & Marketplace Success	
List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
Indicate separately what percentages of your sales are to the government and education sectors in the past three years?	
Describe any relevant industry awards or recognition that your company has received in the past five years.	
5. Promoting the use of the Master Agreement (Per Request For Proposal section 4.2c.)	
Describe your company's experience working with contracting cooperatives.	
List the cooperatives through which you currently have a contract and provide sales volume information for each. Identify any restrictions on pricing and sales imposed by your other cooperative contracts.	
Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.	
Describe how you intend to encourage usage of your Master Agreement by Purchasing Entities.	
Describe your approach to negotiation of Participating Addenda. Describe the extent to which you 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?).	
6. Qualified Disabled Veteran/Service-Disabled Veteran-Owned Business Program	
Under MCL 18.1261, a "qualified disabled veteran" means a business entity that is 51% or more owned by 1 or more veterans with a service-connected disability. A "service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16). Are you a qualified disabled veteran?	**Enter YES or NO.**
To demonstrate qualification as a qualified disabled veteran, you must provide: (a) Proof of service and conditions of discharge (DD214 or equivalent); (b) Proof of service-connected disability (DD214 if the disability was documented at discharge or Veterans Administration Rating Decision Letter or equivalent if the disability was documented after discharge); and (c) Legal documents setting forth the ownership of the business entity. In lieu of the documentation identified above, you may provide proof of certification by the National Veterans Business Development Council.	Enter the names of documents submitted with your proposal to demonstrate status as a qualified disabled veteran.
7. Participation in RFP Development or Evaluation	
Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees.	**Enter YES or NO.** If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.

If you are awarded a contract under this solicitation, in order to provide the goods or services required under a resulting contract, do you intend to partner or subcontract with a person or entity that assisted in the development of this solicitation?	**Enter YES or NO.** If you enter "YES," you are not eligible for contract award. An awarded vendor may not partner or subcontract with anyone to provide goods and services required under a resulting contract if that subcontractor or partner assisted in the development of this solicitation.
Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP?	**Enter YES or NO.** If you enter "YES", you are not eligible for contract award or to work as a subcontractor for the awarded vendor.
8. State Government Experience and Prior Experience	
Does your company have experience working with the state governments? If so, please provide a list (including the contract number) of the contracts you hold or have held with the any state government customer for the last 10 years.	
Describe at least **3** relevant experiences from the last **5** years supporting your ability to successfully manage a contract of similar size and scope (regardless of contracting state) for the work described in this RFP.	
Experience 1	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	

Experience 2	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 3	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
9. Contract Terms	

Attachment A – NASPO ValuePoint Standard Contract Terms: Bidder must affirm agreement with the attached NASPO ValuePoint Standard Contract Terms. If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Attachment F– Lead State Terms and Michigan Participating Addendum **:** Bidder must affirm agreement with the attached Lead State Terms and Conditions . If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Bidder understands they may be required to negotiate additional terms and conditions when executing a Participating Addendum as indicated in section **4.4 Participating State Terms and Conditions**.	**Enter YES or NO.**
10. Insurance Requirements	
Bidder must affirm agreement with the insurance requirements in **Section 5** of **Attachment F.**	
11. Michigan Economic Impact	
Number of employees currently employed at locations within the State of Michigan.	
Number of additional employees to be employed at locations within the State of Michigan if awarded this Contract (if any)	
Minimum wage paid to employees employed at locations within the State of Michigan.	
Average wage paid to employees employed at locations within the State of Michigan.	
Percentage of employees employed at locations within the State of Michigan that are covered by employer-provided health insurance.	
12. Labor and Environmental Laws Compliance	
Bidder must disclose any violations of state or federal labor and employment laws and regulations received within the past five years.	
Bidder must disclose any violations of state or federal environmental laws and regulations received within the past five years.	
13. Other	

Classification of Employees. I certify that the company has properly classified its employees in accordance with federal/state labor and employment laws.	**Enter YES or NO.**
Abusive Labor Practices. The Contractor certifies that it will not furnish any Deliverable that was produced fully or partially by forced labor, forced or indentured child labor, or indentured servitude.	**Enter YES or NO.**
Certification of Michigan Business- Public Act 431 of 1984, Sec. 268. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Business Tax Corporate Income Tax Return. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Income Tax return showing income generated in, or attributed to the State of Michigan. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, withheld Michigan Income Tax from compensation paid to the company's owners and remitted the tax to the Michigan Department of Treasury.	**Enter YES or NO.**
Iran Linked Business- Public Act 517 of 2012. I certify that the Company is not an Iran-Linked business as defined by Public Act 517 of 2012.	**Enter YES or NO.**
Clean Corporate Citizen. I certify that the Company is a Clean Corporate Citizen as defined by the Environmental Protection Act, 1994 PA 451.	**Enter YES or NO.**
Convict Labor. The Contractor certifies that if using convict labor, it is complying with all applicable state and federal laws and policies.	**Enter YES or NO.**
SOM Debt/Tax Payment. All SOM tax/debts. I certify that all applicable State of Michigan taxes are paid, and that no outstanding debt is owed to the State of Michigan.	**Enter YES or NO.**
Authorization to Verify Information Provided by Vendor. I authorize the State to verify that all information provided in this registration, in bidding and contracting documents, and any attachments or supplement documents and processes are accurate.	**Enter YES or NO**.

Section 5: Price and Cost Proposal

The Cost Proposals will be evaluated independent of the technical evaluation. Cost proposals must be submitted to the Lead State as a separate document in the Offerors' Proposals. **Do not embed the cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per **Attachment C.**

Cost for the NASPO ValuePoint Master Agreements shall be based on the following:

Offeror must include all applicable costs, prices, and rates as required by **Attachment C**, Pricing. Prices and rates shall include all applicable anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

Freight from any Contractor to the dealer network locations within the lower 48 states will not be paid by the purchasing entity. Any additional freight applicable to shipments to the nearest port of Alaska and/or Hawaii must be provided.

The Lead State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Offeror's or any subcontractor's employee's wages. The Lead State will pay for any applicable Lead State or local sales or use taxes on the products provided or the services rendered within the Lead State. If required by Lead State, taxes shall be included as a separate line item on an Offeror's invoice. The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

5.1 Price and Rate Guarantee Period

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

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

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

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

2. Definitions

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

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

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

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

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

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

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

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

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

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum. The Lead State is also a Participating Entity.

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

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

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

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

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

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

4. Amendments

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

5. Participants and Scope

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

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

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

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

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

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

g. **Resale**. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell

Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

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

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

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

(6) Purchase Order date; (7) Ship Date; (8) and line item description, including (if applicable) pricing for each: chassis, body/equipment item, and installation by product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is Microsoft Excel or equivalent.

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

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

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

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

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

b. Contractor agrees, as Participating Addendums become executed, if requested by

ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

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

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

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

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 26, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 26 or to terminate for default pursuant to section 28.

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

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or

effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Price and Rate Guarantee Period

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

11. Individual Customers

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

Administration of Orders

12. Ordering

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

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

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

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

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

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

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

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

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

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

13. Shipping and Delivery

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

b. All deliveries will be "Inside Deliveries" as designated by a representative of the

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

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

14. Laws and Regulations

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

15. Inspection and Acceptance

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

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

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

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the

process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

16. Payment

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

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor’s skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under

this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

General Provisions

19. Insurance

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

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

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

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

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

d. Prior to commencement of performance, Contractor shall provide to the Lead State a

written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

20. Records Administration and Audit

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

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

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

21. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

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

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

22. Public Information

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

23. Assignment/Subcontracts

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

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

24. Changes in Contractor Representation

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

experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

25. Independent Contractor

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

26. Cancellation

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

27. Force Majeure

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

28. Defaults and Remedies

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

(1) Nonperformance of contractual requirements; or

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

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

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

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

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

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

(1) Exercise any remedy provided by law; and

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

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

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

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

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

29. Waiver of Breach

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

30. Debarment

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

31. Indemnification

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

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

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

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

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

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

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

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor.

If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

32. No Waiver of Sovereign Immunity

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

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

33. Governing Law and Venue

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

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

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of

priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

34. Assignment of Antitrust Rights

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

35. Contract Provisions for Orders Utilizing Federal Funds

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

36. Leasing or Alternative Financing Methods

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

Attachment B – Statement of Work

B1. SCOPE & FUNCTION REQUIREMENTS

B1.1 Scope –The Lead State of Michigan Department of Technology, Management and Budget, Central Purchasing Division, in collaboration with NASPO ValuePoint is focused to competitively solicit and award to the Proposers that demonstrate they can provide the broadest scope of required equipment, at the most competitive pricing available (best value: quality versus cost), to all States and Territories of the USA.

Bidders shall demonstrate they are qualified to provide, all or a portion thereof, of equipment/products and all related services necessary to deliver equipment/products to Purchasing Entities within standards or codes regulated by the industry and the law**.**

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.2 Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – The focus for this RFP is to provide equipment that is self-propelled (turnkey) or mounted to a chassis. The cost proposal in Attachment C – Pricing reflects that. Many Bidders may also provide additional equipment that does not meet the "self-propelled" or "chassis mounted" criteria. The lead State and NASPO's intent is to include all associated equipment in a contract award to successful Proposers. Proposers that do not meet the criteria for "self-propelled" or "chassis mounted" equipment but do provide comparable equipment as those listed in the Attachment C, may submit a proposal. The Proposer shall insert their pricing information on the Attachment C, in the "other" section within the most applicable category.

Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services shall include, but is not limited to:

a) Aerial Equipment - boom cranes, buckets, digger derricks, knuckle booms, platforms and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Aerial Equipment".

b) Refuse Equipment – Refuse/recycling bodies, Gripper systems, lift systems, loader-hopper bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Refuse Equipment".

c) Roadway Equipment – Asphalt distributer bodies, live bottom bodies, asphalt flusher/sprinkler bodies, asphalt hot box/recycler, pothole patchers, roll-off patchers,

asphalt sealers, dump bodies, service bodies, road ditch maintenance, van service bodies, roll-off cable hoists, hydro excavators, sprayers, lube skids, grease disposal, tanks, mechanic bodies, street sweepers, loading/grapple, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Roadway Equipment”.

d) Snow & Ice Equipment – Airport equipment, sweepers, liquid de-icing systems, salt/sand spreaders, snow melters, plows, blades, blowers, wings, specialty vehicles, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Snow and Ice Equipment”.

e) Vacuum/Sewer Equipment – tanks, flushing systems, catch basin cleaners, vacuum excavators, water recycling, vacuum bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Vacuum/Sewer Equipment”.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.3 Out of Scope - This solicitation should NOT be construed to include any of the following:

Construction and agricultural equipment, including but not limited to dozers, loaders, excavators, skid steers, agricultural tractors, mowers, trailers for hauling, and truck chassis (stand-alone).

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.4 Solutions Based Solicitation - Because of the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the State of Michigan and NASPO are asking Bidders to provide solutions that meet industry and legal standards for the complex scope of truck upfitting.

The State of Michigan and NASPO ValuePoint RFP is a solicitation that does not contain detailed specifications. However, equipment guidelines are provided for pricing and evaluation purposes per Attachment C. Where items are specified, those items should be considered the minimum required.

When proposing solutions, successful Bidders should focus on the State's and NASPO's "Ultimate Goal". **The "Ultimate Goal" of this RFP is to provide a broad scope of needed equipment with all associated services (sales, warranty, parts, and maintenance & repair) to Purchasing Entities of all States and Territories of the USA, while providing the most competitive pricing available (Best Value) to Participating States.** The Bidders proposed business approach is the solution provided to achieve the "Ultimate Goal". It may be exactly how a Proposer conducts business currently, or it may be a slightly different approach in order to better achieve the "Ultimate Goal". For examples see **B. 1.5 and B.1.6** below. Proposals will be evaluated, in part, on the Bidders' demonstrated ability to meet or exceed the "Ultimate Goal". It is recommended that Proposers submit their complete line of products and services described in the scope of this RFP. The Lead State and NASPO, reserve the right to accept any or all equipment/products and services proposed for award, for any reason.

The contractual solutions outlined in **B.1.6 a) and b)** are suggested, however, other proposed equitable contractual solutions shall be considered. Each primary equipment category will be awarded to one or more Bidders provided each category receives responsive, responsible bids. Due to the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the pricing model shall be one or a combination of the following:

i) applicable quoted base pricing per proposed **Attachment C Pricing** including, but not limited to chassis, equipment item, installation, and delivery,
ii) "Percentage off" of the Supplier's most current dated government or commercial catalog or price list, and
iii) quoted installation per applicable hourly rate.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.5 Business Solutions - The following items are suggested business solutions. The Proposer may provide a combination of any one of these solutions. The Lead State and NASPO are seeking Contractors that can provide the broadest scope of needed equipment, with all associated services (sales, warranty, rental, parts, and maintenance & repair). The Lead State and NASPO reserve the right to award one, all, or any combination of the following suggested solutions. **(Stand-alone contracts for rental, parts, and maintenance & repair will not be awarded. Rental, parts, and maintenance & repair shall only be included to awarded "Sales" contracts)**

a) Equipment Only – Purchasing Entity's intent is to purchase only the

equipment/products to install themselves or have a third-party installer provide the installation services.

b) Equipment with Installation – Purchasing Entity's intent is to purchase equipment/products and have the Proposer, or their Dealer/Distributer, provide the installation services on a chassis provided by the Purchasing Entity.

c) Turn-Key – Purchasing Entity's intent is to purchase equipment/products installed on a chassis. The chassis is included in the purchase, providing the Purchasing Entity with a complete, fully functional vehicle ready for its intended function.

d) Equipment Rental – Purchasing Entity's intent is to rent "Turn-Key" equipment/products rather than purchase. **(Stand-alone contracts for equipment rental will not be awarded)**

e) Equipment Parts – Purchasing Entity's intent is to purchase replacement parts for previously purchased equipment/product. **(Stand-alone contracts for equipment parts will not be awarded)**

f) Maintenance & Repair Service – Purchasing Entity's intent is to acquire maintenance and repair service from the Contractor. **(Stand-alone contracts for Maintenance & Repair Service will not be awarded)**

Any deviations from industry standards must be identified by the Proposer. The Proposer must explain how the equipment/products and services they propose will provide equivalent performance and functionality in all applicable aspects. Failure to do so may result in the rejection of the proposal, in whole or in part.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.6 Contractual Solutions

a) Manufacturer as Contractor - Contractors may offer any brand for which they are a manufacturer. Sales, installation, parts, maintenance, repair, and warranty service would be achieved via the manufacturer's brick & mortar locations, and/or their dealers, distributers, or possibly their own or a third-party mobile maintenance/repair/warranty service provider. This solution would likely cover many States for sales & service requirements. However, the equipment selection would be limited to the manufacturer's offerings.

With their response to this solicitation, suppliers must provide a complete Microsoft Excel spreadsheet listing of all dealers or authorized representatives within the entire area to be covered. Minimum Dealer information required is

the name of business, address, contact name(s), phone number(s) and email address(es) and website(s).

b) Distributor/Dealer as Contractor - Contractors may offer any brand for which they sell and service as an authorized distributor/dealer[1]. Sales, installation, maintenance, repair, and warranty service would be achieved via the distributer's and/or manufacturers' brick & mortar locations, manufacturers' dealers, and/or possibly their own, their manufacturers' or a third-party mobile maintenance/repair/warranty service provider. This solution would enable a regional distributer/dealer to provide multiple brands to many more states and territories.

Bidding distributor/dealers seeking to submit a proposal with this type of structure would be required to do the following:

i. Submit with your bid, a certified letter, from each participating manufacturer, that communicates agreement to participate with this contractual arrangement, and shall provide the most competitive pricing commensurate with a national cooperative contract with NASPO.
ii. Submit with your bid, from each participating manufacturer, a complete list of their authorized dealers in all states.
iii. If awarded a contract, Bidder will be required to negotiate Participating Addenda with each state wishing to participate in this agreement, and provide all other administrative services necessary to execute, manage and maintain their contract with each participating State, including, but not limited to, providing contract spend reports, process payments for the required administrative fees on a regular basis (quarterly), and process necessary addenda for contract activities.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

[1] **Please refer to items i, ii, and iii in this section.**

B1.7 Contractor Responsibility - The Lead State and NASPO require a Contractor to take responsibility for the performance of all delivered equipment/products and services. It is assumed the Contractor retains sub-contractors in one or several functions required to provide products and services to the Purchasing Entity. The responsibility for all actions pertaining to delivery of product and services by sub-contractors would ultimately fall upon the Contractor.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.8 Disclosure of Subcontractors
If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor. Of the total bid, the price of the subcontractor's work. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- Authorized Dealer's are not considered a "Subcontractor" for the purposes of this solicitation.

Bidder must provide detailed information as requested in the requirement(s):

The legal business name, address, telephone number of the subcontractor(s):	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities:	
The relationship of the	

subcontractor to the Bidder:	
Whether the Bidder has a previous working experience with the subcontractor. **If yes, provide the details of that previous relationship:**	
A complete description of the Contract Activities that will be performed or provided by the subcontractor:	
Of the total bid, the price of the subcontractor's work:	

B2. RENTAL REQUIREMENTS (Optional)

B2.1 Specification (Guidance)

Contractor shall provide Equipment for rental per **Attachment C, Pricing**. **(Stand-alone contracts for equipment rental will not be awarded).** The Supplier must include the following:

i. Only listed items that meet these requirements shall be included under this contract
ii. Daily, weekly, and monthly rental rates.
iii. Percentage discount offered by category for such rates.

The Contractor must provide deliverables, including the staffing to accomplish all service incidentals necessary to complete the work, as set forth in this solicitation.

a) The Contractor must provide make and model of all equipment offered for rental. Brand or trade names provided by the Contractor are for identification purposes, and do not limit the Contractor to such brands, provided alternates offered are equal in quality and function to those specified.

b) All rental equipment is to meet or exceed applicable federal and state safety standards as mandated by OSHA, and MIOSHA Motor Carrier Division. This equipment is to meet or exceed applicable American National Standards Institute (ANSI) specifications. The Contractor will provide written documentation guaranteeing compliance with all safety standards.

c) The Contractor shall provide written documentation confirming satisfactory testing on equipment where mandated by law (to include but not limited to: stress testing, dielectric testing, visual inspections) completed by a licensed and reputable testing firm.

d) Rental equipment shall be no more than four (4) years old.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.2 Availability and Delivery of Equipment

a) All requested orders must be delivered within two (2) calendar days/48 hours after receipt of order.

b) Emergencies will be responded to within one (1) to six (6) hours. Equipment shall be available as both F.O.B. delivered and F.O.B. pick-up.

c) No premium rates will be charged for delivery after normal business hours.

d) Rental or leased equipment items shall be fully fueled and operational at the time of pick-up or delivery.

e) The Contractor will be required to perform a walk-around equipment inspection at the time of delivery and pickup.

f) The Contractor (or their designee) and the Program Manager (or their designee) shall document the inspection by mutual execution of an inspection document provided by the Contractor.

g) The Purchasing Entity is responsible for refueling all rented equipment upon its return.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.3 Maintenance/Service

a) The Contractor will be responsible for all maintenance/service necessary to maintain satisfactory operation of rental equipment at no cost to the Purchasing Entity.

b) Equipment shall be serviced according to manufacturer specifications. The Contractor shall maintain an equipment schedule for service and retain complete lifetime service records for all equipment.

c) If a repair is needed and requires the piece of equipment to be out of service, the Contractor shall provide a replacement.

d) Contractor will maintain a Dedicated Product Support Department to ensure proper function of rented or leased equipment.

e) On-site maintenance must be performed according to the recommended manufacturer maintenance schedule.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.4 Training

The Contractor must provide the following training:

An orientation training shall be provided upon request at the time of delivery. The training shall be deemed sufficient by the Purchasing Entity, to include detailed equipment operation and minor maintenance and inspection practices.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3. PARTS, MAINTENANCE & REPAIRS REQUIREMENTS (Optional)

B3.1 Parts - (Stand-alone contracts for equipment parts and maintenance and repairs will not be awarded) Quality of Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the agency contact person. Aftermarket Repair parts must be equal to or exceed Contractor original equipment manufacturer's (OEM) specifications. Repair parts must be packaged and distributed under their respective nationally known name brands. All rebuilt or remanufactured parts must meet the same requirements as listed above. Some repair parts may be required to be original equipment manufactured repair parts Contractor's dealer network must carry a complete line of OEM parts for all models of equipment they carry. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.2 Warranty/Buy Back - Contractor are 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 Purchasing Entity. A copy of the Warranty shall be included for replacement parts purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.3 Maintenance/Repair Facilities - Repair Facilities that will perform the warranty work of items under this Contract shall be identified as the Supplier's dealer network. The manufacturer, whether contracted directly, or associated with the Distributer by certified letter, is responsible for ensuring that the facilities are able to adhere to the contract requirements for warranty work performance.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4. GENERAL REQUIREMENTS

B4.1 Licensing - Sales of motor vehicles are subject to state Motor Vehicle Statutes. License requirements for states participating in the contract will be addressed in each state's participating addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.2 Warranty - Equipment/Options/Accessories/Attachments. The Contractor agrees the products furnished under this Contract shall be covered by all commercial

warranties the Contractor or, if Contractor is a supplier only, that the product manufacturer 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. The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the agency contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no additional cost to the agency. Supplier 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. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment: Name of Purchasing Entity and division, if applicable. Make, Model, VIN, and equipment control number of Purchasing Entity (Inventory number). Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this contract shall be authorized by the supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by trained certified, or authorized service technicians. Equipment that will remain in the supplier'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 chassis and equipment in the Contractor's possession.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.3 Ordering - No minimum orders will be considered under this Contract. Orders should not be implemented by the Purchasing Entity solely on the Contractor's catalog. The Catalog shall be used as a guide for identifying available equipment and options, and a source for confirming quoted pricing from the Contractor. The Purchasing Entity should **always** contact the Contractor's applicable point of Sale prior to issuing a Purchase Order. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Supplier's manufacturer/dealer for the

equipment being purchased. Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.4 Payment - Contractor must accept mailed and electronic payments.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.5 Documents - Contractor shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, and with the product invoice, or at the request of the Purchasing Entity. At the Contract Administrator's or Purchasing Entity's request, Suppliers shall provide catalogs and current price lists at no charge. A copy of the catalog pricing page or price list is to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in Attachment C Pricing.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.6 Changes in Contractor Contact - The Supplier shall notify the Contract Administrator 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 Contract Administrator shall be able to contact the Supplier at all times during business hours.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.7 Invoices - To ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure the invoice shall include the following information: Purchase order number if applicable. Make, model, and VIN number of equipment. Name of Purchasing Entity. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided. The Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering party for their accounting purposes. Name of company who provided the products/services.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.8 Prompt Payment Discounts - Prompt payment discounts will not be considered in the evaluation of offers. However, any discount offered will be annotated on the award and may be taken if payment is made within the discount period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.9 Delivery - Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Supplier until delivered and accepted. Delivery shall be made in accordance with instructions on the purchase order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, the Supplier shall seek clarification from the ordering party and/or the Contracting Officer. Delivery on parts is to

be made within 30 days. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost. Some ordering entities will have the capacity to pick up their equipment from the dealer.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.10 Training - Supplier shall provide information for all training opportunities for the equipment being purchased, including CDs, DVDs, in house, orientation type training, maintenance, and operator.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.11 Pricing - The State is requesting pricing for new equipment within the scope of this RFP for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services for purchase and/or rental, parts, maintenance & repairs. Specification guidelines are provided within the Pricing table per **Attachment C**, using the Good/Better/Best model for pricing similar models of equipment within the same equipment usage category. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers may submit actual pricing with the percentage discount already applied, as long as the Supplier list price is stated first, then the discount, then the final discounted price.

Pricing is firm for a 365-day period ("Pricing Period"). The first pricing period begins on the effective date of the Contract. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period. Only one price adjustment is allowed per "Pricing Period".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.12 Price Adjustments - Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes for no longer than 30 days, unless extended by mutual agreement. If no agreement on an adjusted price is achieved after 30 days of negotiation, the Participating Entity may remove the item from the list of offerings, at its sole discretion.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.13 Special Pricing - During periods of market instability due to fractures in the supply chain or other factors, pricing adjustments may be issued on a quote-by-quote basis by the Contractor for a specified period of time as designated in a contract amendment. These amendments are not subject to the price adjustment limitations in B4.12. During this limited period of time, the contract's current price sheet shall be used as "baseline pricing". The quotes shall be structured with "baseline pricing" plus or minus actual Contractor price impacts due to the current market conditions. All quotes provided shall be effective for a minimum of 30 days. Once the quote pricing period expires, pricing shall revert to the contract's current "baseline pricing".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.14 Price List – All "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. When price sheets are updated, the successful Contractor will provide the Lead State Contract Administrator and Issuing Officer an electronic price list in Excel or Excel compatible in ".xls" format that includes

both the published list prices, the discount used to compute the final cost, and the final NASPO ValuePoint cost.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.15 Allowable Charges Freight/Shipping/Set-up Fees -. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile, or the dealer is allowed to set the rate. Delivery is to be FOB Destination (of Purchasing Entity) freight collect. Any Freight, shipping and handling costs and set-up fees paid by the Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.16 Allied Equipment

Allied Equipment may only be sold in connection with the sale of a contract item. Allied Equipment must be clearly labeled on the purchase order or quote as Allied Equipment. "Allied Equipment" means an incidental item, attachment, accessory, part, or a specific bundle of the foregoing that is not manufactured by the contract Supplier but has been requested by a Purchasing Entity to complete the purchase of equipment awarded on Contract. Allied Equipment may modify, the contract item with which it is being sold, but it may not substantially convert the contract item to such an extent that it would be substantially similar in purpose to, and compete with a contract item awarded to another Supplier.

a) Awarded Vendor(s) may offer Allied Equipment that compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). Allied Equipment will include:

i) Accessories

ii) Components

iii) Upgraded parts

b) Allied Equipment may only be acquired through the Awarded Vendor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s).

c) Allied Equipment must be priced at a minimum discount of 15% from MSRP or List Price.

d) Allied Equipment shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all Allied Equipment in a single Order shall be determined by the Participating State or Entity.

e) It shall be at the discretion of the Participating State or Entity to allow Allied Equipment in their Participating Addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.17 New Products - All proposed equipment/products shall be delivered as new and fully operational to the Purchasing Entity's location. Exceptions must be clearly disclosed in the "Notes" section of **Attachment C Pricing.**

New Products may be added to the contract when pricing updates per section B 4.12 Pricing Adjustments are requested. The discount cannot be lowered throughout the Contract period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.18 Discontinued Products - Suppliers are to notify the Contract Administrator of any changes in their schedule of equipment such as discontinued products or replacement models. The updating of new and discontinued products shall be completed when pricing adjustments are initiated per section

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.19 Liquidated Damages - Late or improper completion of the Contract Activities will cause loss and damage to the Participating Entity and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, if there is late or improper completion of the Contract Activities the Participating Entity is entitled to collect liquidated damages in the amount of $5,000 and an additional $100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the Participating Entity, and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, the Participating Entity may assess liquidated damages against Contractor as specified below.

- The Participating Entity is entitled to collect $1,000 per individual per day for the removal of any Key Personnel without prior approval of the Participating Entity.
- The Participating Entity is entitled to collect $1,000 per individual per day for an unapproved or untrained key personnel replacement.

B4.20 Service-Level Agreements (SLAs)

A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.

B. The Lead State reserves the right to reconsider or amend SLA amounts for split awards should they occur.

C. Please Note: Should Bidders require clarification or have any questions with regard to the SLAs, they should submit them during the *Question and Answer Period* of this solicitation; please see the **Proposal Instructions** for the timeline.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose	• Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Delivery shall not exceed the agreed upon delivery date by more than 14 calendar days. • Equipment purchases requiring installation services: Once the Contractor has secured parts for installation, a mutually agreed upon delivery date shall be established with the Purchasing Entity. Delivery shall not exceed the agreed upon delivery date by more than 7 calendar days.
Acceptable Standard	1. All deliveries must occur in accordance with the Purchasing Entity's receiving hours. 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager prior to the scheduled delivery date and time. 3. Items, brands, and quantities delivered will match the Order Confirmation exactly. 4. Signed and dated packing slips will be provided to Purchasing Entity at the time of delivery. 5. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager. 6. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate. The acceptable standard is 100% compliance.
Credit Due for Failing to Meet the Service Level Agreements	1. 5% of the purchased price may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. 10% of the purchase price may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed. At the discretion of the Participating Entity, these credits may be applied toward any amount payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

Attachment D - RFP Evaluation Scoresheet

TRUCK BODIES, SEASONAL MAINTENANCE EQUIPMENT, & UPFITTING SERVICES #210000000535 The State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division (Lead State)

Firm Name: _____

Evaluator: _____

Date: _____

Score will be assigned as follows:

0 = Failure, no response
1 = Poor, inadequate, fails to meet requirement
2 = Fair, only partially responsive
3 = Average, meets minimum requirement
4 = Above average, exceeds minimum requirement
5 = Superior

		Score (0-5)	Weight	Points
1. Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function* ***(If applicable, section B2. and B3. shall be scored separately****)*	40 points possible		X8	
2. Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 points possible		X3	
3. Agreement with Standard Contract Terms: *Vendor Questions Worksheet Section 9*	15 points possible		X3	
4. Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 points possible		X3	
5. References: *Vendor Questions Worksheet Section 8*	15 points possible		X3	
TOTAL EVALUATION POINTS	**(100 points possible)**		**Total**	

Attachment E - Distributor (Dealer) Agreement

(Example of an Approved Distributor Agreement)

APPROVED DISTRIBUTOR (DEALER) AGREEMENT – [Name of State]
FOR Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – RFP 210000000535

NASPO ValuePoint Contract Number: _____

The State of _____(**State**) has entered into a contract with _____(**Manufacturer**) to provide Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services to the State and political subdivisions within the State resulting from State of Michigan Request for Proposal 210000000535 (**Contract)**.

Specific independent approved distributors will be authorized by **Manufacturer** to provide Truck Bodies, Seasonal Maintenance Equipment, and related services required for purchasing Truck Bodies, Seasonal Maintenance Equipment (equipment installation). ("Distributor(s)" herein includes **Manufacturer's** approved distributors).

This Distributor Agreement will identify the services to be provided by Dealer, as they may be used to satisfy Manufacturer's obligations under the terms of the Contract. Dealers will need to sign the Approved Distributor Agreement before the Dealer will be authorized to provide services to the State. This Agreement will be effective on the last signature date below.

The authorized Dealer agrees to the following:

1. **PROFESSIONAL SERVICES**
   Dealer agrees to provide the following services on behalf of Manufacturer in furtherance of Manufacturer's obligations under the terms of the Contract:

   [Insert List of Services to be Provided by Dealer]

   Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work under the Contract, if applicable. Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State in furtherance of the Contract.

2. **INSURANCE REQUIREMENTS**
   The Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

3. **INDEMNIFICATION/HOLD HARMLESS**
   The Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Dealer, its employees or subcontractors or volunteers.

4. **MANUFACTURER ACKNOWLEDGMENT**

   Manufacturer acknowledges and agrees that: (1) Dealer is a subcontractor, as it relates to any services that Dealer provides to State to satisfy an obligation of Manufacturer under the terms of the Contract; (2) Dealer is an approved distributer of Manufacturer; and (3) that Dealer will abide by and comply with the terms and conditions of the Contract.

IN WITNESS WHEREOF, by signing where indicated below, the authorized representative of the Dealer executes and agrees to the terms of this Distributor Agreement.

DEALER

[Signature of Dealer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

Manufacturer

[Signature of Manufacturer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

DEALER INFORMATION

Legal Status: Corporation † Partnership † Sole Proprietor

Dealer Name:_____

Address:_____

City, State, Zip:_____

Phone:_____ **Fax:_____**

Contact Name:_____

Email Address:_____

Federal Tax ID #:_____

Attachment F- Lead State Terms and Michigan Participating Addendum

These LEAD STATE TERMS AND CONDITIONS (or the State of Michigan's Participating Addendum) are agreed to between the State of Michigan (the "**State**") and [Insert Company Name] ("**Contractor**"), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on [Month, Day, Year] ("**Effective Date**"), and unless terminated, expires on [Month, Day, Year] *Note: (3 year base contract).*

This Contract may be renewed for up to two one-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Attachment B – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

   Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Attachment B**.

   Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond if, in the opinion of the State, it will ensure performance of the Contract

2. Notices. All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

3. Contract Administrator. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

State:	Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

4. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
Scott Poyer Poyers@michigan.gov 517-719-6802	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

5. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result

from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: $1,000,000 Per Accident	Policy must: (1) be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of

coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

6. Administrative Fee and Reporting. Contractor must pay an administrative fee of **.5%** on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: https://www.thepayplace.com/mi/dtmb/adminfee

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the Purchasing Entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

7. Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

8. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and

taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

9. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor. For the purposes of this Contract, any approved independent distributor (Dealer) of Contractor, having executed a Distributer/Dealer Agreement attached as **Attachment E** will be considered a subcontractor of Contractor, in accordance with the terms of this Section.

10. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

11. Background Checks. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in **Attachment B**, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

12. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

13. Change of Control. Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change

in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

14. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in **Attachment B**.

15. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Attachment B. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

16. Delivery. Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in **Attachment B**. All containers and packaging become the State's exclusive property upon acceptance.

17. Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities,

Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

18. Warranty Period. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Attachment B**. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

19. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Attachment B**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

20. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in **Attachment B**.

21. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b)

terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

22. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 23, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

23. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

24. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to

Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

25. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

26. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the

State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

27. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

28. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

29. State Data. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

30. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party,

without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. **Obligation of Confidentiality**. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. **Cooperation to Prevent Disclosure of Confidential Information**. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party 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 Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. **Remedies for Breach of Obligation of Confidentiality**. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. **Surrender of Confidential Information upon Termination**. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State

following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

31. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

32. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material

breach of this Contract, which entitles the State to terminate this Contract under Section 22, Termination for Cause.

33. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

34. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

35. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

36. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

37. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

38. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

39. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused

by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

40. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

41. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

42. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

43. Entire Agreement and Order of Precedence.

These Lead State Terms and Conditions which are also referred to herein as the State of Michigan's Participating Addendum (including all amendments and attachments hereto) and the Master Agreement (including all amendments and attachments thereto) (collectively, the "**Contract**") constitute the entire agreement between the parties concerning the subject matter of this Contract and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. The terms and conditions of this Participating Addendum (including all amendments and attachments hereto) shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement as now or hereafter amended. This Contract may be modified only by a written document executed by the parties hereto.

NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS

CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

Any terms that may be contained in Attachment G or any other Purchasing Entity's or Participating State's Participating Addendum are expressly excluded from incorporation into this **Contract** and will have no legal effect on the contractual relationship between the Lead State of Michigan and Contractor. Further, the State of Michigan is not, and will not be, a party to any agreements or individual contracts entered into by and between Contractor and any other Purchasing Entity.

The following Attachment(s) and Exhibit(s) are hereby incorporated by reference and made part of these Lead State Terms and Conditions without difference:

Attachment B	**Statement of Work**
Attachment C	**Pricing**
Attachment E	**Distributer/Dealer Agreement**
Exhibit 1 to Attachment F	**Federal Provisions Addendum**
Exhibit 2 to Attachment F	**Byrd Anti-lobbying Certification**

44. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

45. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

46. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

47. Contract Modification. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

EXHIBIT 1 TO ATTACHMENT F
FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in 41 CFR Part 60-1.3, and except as otherwise may be provided under 41 CFR Part 60, then during performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the

administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contract** in excess of $2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of $2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which

prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

a. **Contractor**. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. **Subcontracts**. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. **Breach**. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

a. **Overtime requirements**. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

c. **Withholding for unpaid wages and liquidated damages**. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

d. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

d. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **$100,000 or more** shall file the required certification in Exhibit 2 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal

contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under 2 CFR 200.322, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;

ii. Meeting contract performance requirements; or

iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

a. Access to Records. The following access to records requirements apply to this contract:

i. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed

iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

b. Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

c. DHS Seal Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

d. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

e. No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."

f. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

EXHIBIT 2 TO ATTACHMENT F
BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than $100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [enter contractor name here], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

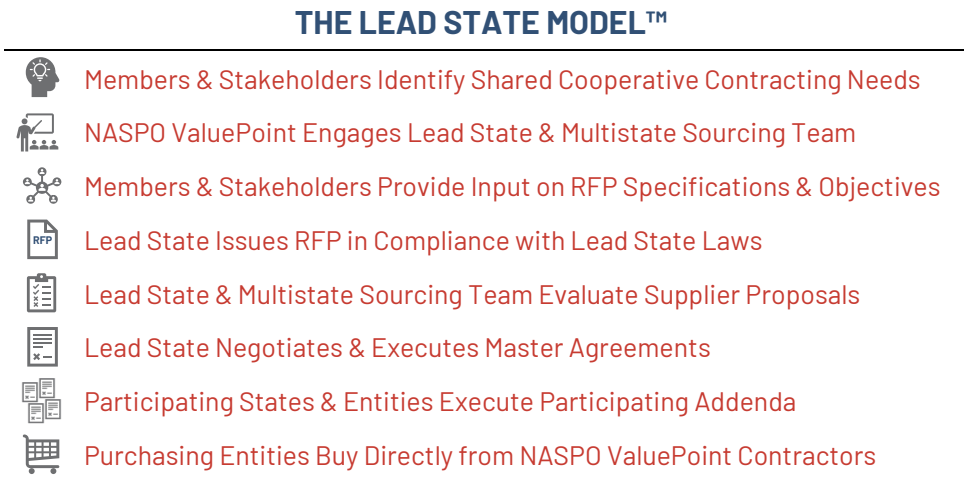
_____

Date

Attachment G- Potential 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.



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

Historical Usage

As this is a new portfolio established by NASPO ValuePoint there is no historical send to note for - Truck Bodies, Seasonal Maintenance Equipment & Uplifting Services.

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
Hawaii	N/A	N/A
Montana	N/A	Exhibit 1 to Attachment G
South Dakota	$4,000,000.00	N/A
New Mexico	N/A	Exhibit 2 to Attachment G
South Carolina	NA	NA
Colorado	$3,000,000.00	Exhibit 3 to Attachment G
Vermont	$250,000.00	Exhibit 4 to Attachment G

TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: $7,250,000.00
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 1 to Attachment G – Montana Terms and Conditions

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

State of Montana Terms and Conditions

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

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

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

ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

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

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

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

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

STATE OF MONTANA ADMINISTRATIVE FEE: The Participating Entity assesses an

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

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

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

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

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

Federal Terms and Conditions (Non-Construction)

1. NONDISCRIMINATION

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

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

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

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

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

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

2. LOBBYING

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

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

3. DRUG-FREE WORK PLACE

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

4. ENVIRONMENTAL PROTECTION

a. The Contractor agrees that its performance under this contract shall comply with:

(1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);

(2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;

(3) The Resources Conservation and Recovery Act (RCRA);

(4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);

(5) The National Environmental Policy Act (NEPA);

(6) The Solid Waste Disposal Act (SWDA);

(7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;

(8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

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

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

5. USE OF UNITED STATES FLAG VESSELS

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

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. DEBARMENT AND SUSPENSION

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at www.sam.gov to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

7. BUY AMERICAN ACT

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

8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES

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

9. COPELAND "ANTI-KICKBACK" ACT

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any

person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

Any Contract or subcontract in excess of $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)

Contractors that bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. PROCUREMENT OF RECOVERED MATERIALS

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of

recovered materials identified in the EPA guidelines.

15. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.

Exhibit 2 to Attachment G – New Mexico Terms and Conditions

1. **Taxes:**

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

2. **Retainage.**

Reserved

3. **Performance Bond.**

Reserved

4. **Term:**

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

5. **Termination:**

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

uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

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

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

6. Appropriations:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance,

bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Conflict of Interest; Governmental Conduct Act:

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

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

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

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A)because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

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

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

9. Amendment:

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

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. Merger:

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

11. Penalties for violation of law:

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

12. Equal Opportunity Compliance:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin,

ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. Applicable Law:

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

15. Records and Financial Audit:

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

16. Invalid Term or Condition:

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

17. **Enforcement of Agreement:**

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

18. **Non-Collusion:**

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

19. **Notices:**

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

To the Procuring Agency:

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

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXX

20. **Succession:**

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

21. Headings:

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

22. Default/Breach:

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. Equitable Remedies:

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

24. New Mexico Employees Health Coverage:

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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

23. Indemnification:

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

24. Default and Force Majeure:

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

25. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

26. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

27. **Inspection of Plant:**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

28. **Commercial Warranty:**

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

29. **Condition of Proposed Items:**

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

30. Release:

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

31. Confidentiality:

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

32. Contractor Personnel:

A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

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

33. **Incorporation by Reference and Precedence:**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is

derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.
In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

34. Inspection:

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

35. Inspection of Services:

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the

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

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the Agreement for default.

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

36. Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: $100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

a. Bodily injury: $1,000,000 per person /$1,000,000 per occurrence.

b. Property damage or combined single limit coverage: $1,000,000.

c. Automobile liability (including non-owned automobile coverage): $1,000,000.

d. Umbrella: $1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

37. **Arbitration:**

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

38. **New Mexico Administration Reporting and Fees:**

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies

and local public bodies. "**Gross total sales"** means any invoiced amount less any applicable state and local taxes.

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

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

Sample Reports can be found at:
http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors

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

The Vendor shall indicate the contract number **SWPA #XX-00000-XX-XXXXX** on the remittance.

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

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

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

Exhibit 3 to Attachment G – Colorado Special Provisions (Colorado Fiscal Rule 3-3)

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

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

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

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

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

C. **GOVERNMENTAL IMMUNITY.**

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

D. **INDEPENDENT CONTRACTOR**

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

E. **COMPLIANCE WITH LAW.**

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

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

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall

be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. **PROHIBITED TERMS.**

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

H. **SOFTWARE PIRACY PROHIBITION.**

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

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

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

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

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

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and

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

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

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

Exhibit 4 to Attachment G – Vermont Terms and Conditions

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. **Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

7. **Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and
Completed
Operations
Personal
Injury Liability
Contractual
Liability

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

$1,000,000 Each Occurrence

$2,000,000 General Aggregate

$1,000,000 Products/Completed Operations Aggregate

$1,000,000 Personal & Advertising Injury

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

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

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

9. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. **False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to

otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

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

16. Taxes Due to the State:

A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or

personal income tax on income earned within the State.

B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

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

B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of $250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and

Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding

Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

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

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the

State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. **Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. **Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. **Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends $500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-

133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends

$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. **Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish

and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. **Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. **Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of $1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. **Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents:
(i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

STATE OF MICHIGAN

Request for Proposal No. 210000000535

NASPO ValuePoint Master Agreement for
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

February 16, 2023

Addendum #3

Please take note of the following changes:

A. **Proposal Instructions (Not Re-Issued):** The second pre-bid meeting has been re-scheduled (see section 1.3 Schedule of Events and section 2.4 Pre-Proposal Conference #2 below)

1.3 Schedule of Events

Solicitation Release:	**January 4, 2023**
Pre-Proposal Conference #1:	**January 17, 2023 at 1:00 pm Eastern (13 days)**
Pre-Proposal Conference #2:	**March 14, 2023 at 1:00 pm Eastern (56 days)**
Question Deadline:	**March 27, 2023 at 3:00 pm (34 days)**
Closing Date and Time:	**April 27, 2023 3:00 pm (31 days)**
Anticipated Award Date:	**July 20, 2023 (84 days)**

All times are Eastern time unless indicated otherwise.

2.4 Pre-Proposal Conference #2 (Optional)

A pre-proposal conference will be held on **March 14, 2023, at 1:00 pm Eastern**, remotely via **Microsoft Teams**:

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 229 148 109 440
Passcode: HT9FKc
Download Teams | Join on the web
Or call in (audio only)
+1 248-509-0316,,34912860# United States, Pontiac
Phone Conference ID: 349 128 60#
Find a local number | Reset PIN

Attendance at the conference is optional. Statements made by the solicitation manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the solicitation manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document.

STATE OF MICHIGAN

Request for Proposal No. 210000000535

NASPO ValuePoint Master Agreement for
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

March 30, 2023

Addendum #4

Please take note of the following changes:

1. Submitted Questions and Answers (Issued).

2. Attachment C - Pricing (Re-Issued):

a) Administrative Fee Instructions should read as follows: Please refer to Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions section 6, and Attachment F section 6.

b) Item 52. a), b), and c), Change to "Equipment" description from 2-way blade and 4-way blade to straight and V-Blade.

3. Separation of RFP documents from one main document to individual Attachments (Issued):

- Solicitation Instructions, Confidential Treatment Form, and Vendor Questions Worksheet AD4
- Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions AD4
- Attachment B – Statement of Work AD4
- Attachment C - Pricing AD4
- Attachment D - RFP Evaluation Scoresheet AD4
- Attachment E - Distributor (Dealer) Agreement AD4
- Attachment F- Lead State Terms and Michigan Participating Addendum AD4

NASPO VALUE POINT RFP QUESTIONS FOR: MICHIGAN SOLICITATION NUMBER 210000000535

Question #	Document and Section	Page #	Bidder Question	ANSWERS
1	**4.6 VENDOR QUESTION WORK SHEET** Has there been a **recent** change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company?	25 of 134	What time frame is considered **"recent"**? Months, year(s)??	Within the last two to three years
2	**VENDOR QUESTION WORK SHEET, 11. Michigan Economic Impact 12. Labor and Environmental Laws Compliance**	33 of 134	We are NOT located in Michigan. If we use an authorized distributor within MI. Do we include the distributors information in this section? If we don't use a distributor in Michigan do we leave it blank or N/A?	No, your distributers information is not needed. Your response would be NA.
3	**Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions, 6. Administrative Fees**	40 of 134	Are quarterly reports still required to be submitted to NASPO and participating Purchasing Entities even if there is no activity for the quarter?	Yes.
4	**Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions, 13. Shipping and Delivery**	44 of 134	The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. a destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. **QUESTION:** when submitting our published price lists how do we apply pre-paid freight to various locations in the USA? Per mile as noted in attachment C?	You can choose a location you are shipping the item to. Even though you are providing a lump sum price for shipping, we can calculate the cost per mile based on how far you are shipping from your location to the destination.
5	**Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions, 19. Insurance**	47 of 134	If we use authorized distributors in participating States, is the distributors insurance compliance documents required or ours or both?	The State of Michigan would require your insurance documents upon contract award. You would require the Michigan distributer's insurance for the "Dealer Agreement" with the distributer. Once other States piggyback on your contract, you would collect the certificate of Insurance from the distributers within that State when you execute your dealer agreement.
6	**Attachment B – Statement of Work, B1.8 Disclosure of Subcontractors**	61 of 134	Is a subcontractor the same as a "supplier"? Example would be a cylinder , drag chain, bearing, motor or gearbox supplier.	NO.
7	**Attachment B – Statement of Work, B2. RENTAL REQUIREMENTS (Optional)**	62 of 134	If we are not particpating in B2, how do we respond to the "I have reviewed section?	Not Applicable or NA.
8	**Attachment B – Statement of Work, B4.19 Liquidated Damages**	73 of 134	Do to the current environment in our industry, for both chassis and equipment, the penalty assessed in this section is excessive. We would like to see it removed from the agreement.	These are required by Michigan State law. The amounts may be lowered.
9	**Attachment F - Lead State Terms and Michigan Participating Addendum**	79 of 134	Is this to be filled out and submitted prior to confirmation of NASPO contract award?	It does get filled out and submitted with your proposal **ONLY** if you have exceptions to the current terms in the document. If you have **NO** exceptions, you are not required to submit it.
10	**Attachment B – Statement of Work, B4.9 Delivery**		Should freight be calculated as the equipment from manufacturer to upfitter? Will the municipality buyer deliver the vehicle for upfit and pick up when is complete?	Whatever shipping situation you may have, freight should be a passthrough cost from the carrier. Proof of the actual cost of shipping should be backed up with an invoice from the carrier. Your customer should be responsible to pay for actual shipping costs without additional markup from the Contractor. However, the Contractor is paying for the freight/shipping up front.
11	**Attachment B – Statement of Work, B4.9 Delivery**		Are we going to assume the municipalities will deliver the chassis to be upfitted and pick them up? As far as freight is concerned it is only freight from the manufacturer to the upfitter that is included? Given the municipality may be on the other side of the state and unfair/impossible to include the same freight charge to everyone at its worst point.	See response to question 10 above.
12	**Attachment C, Section 52, a,b,c**		In reference to 2 way and 4 way, do you mean straight blade and v-blade? If not could you clarify what you mean by 2way snowplow and 4way snowplow?	The reference to "2 way and 4 way" is deleted. Please see revised Attachment C - Pricing per Addendum #4.
13	**Section 2: Solicitation Requirements, Information and Instructions to Offerors, section 2.8, and Attachment B, section B4.11**		Confirming how long pricing MUST be firm for. Meaning without allowance for letter of surcharges etc. This new world we got hit a few times from vendors for 8-12% increases so I want to make sure how long we need to be FIRM.	The 180 days to maintain firm pricing relates to the time we have to award a contract. We understand that beyond 180 days, pricing may vary and require re-evaluation prior to award. If awarded a contract, we would expect pricing to be firm for the first 12 months of the contract term.
14	**Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions, 6. Administrative Fees**		When selling to different states. I understand there is a % to pay Naspo, but do we need to be paying Mideal also in those cases?	Each state may have their own Administrative fee in addition to NASPO. The admin fee for Michigan would only apply to Michigan purchases, as it would for other States as well.
15			We do want to be able to sell in other states but due to the nature of our business and some of our vendors having other distributors in those states this has to be case by case - is that acceptable?	Yes. Please identify in your proposal what States you can accommodate from a sales and service perspective.
16	**Attachment C Pricing**		What we quote you want as Basic packages correct? Meaning basic packages and then add-ons per that specific location's wants/needs. Which is basically what we did all these years anyway just clarifying. Example: Michigan Cat has a standard basic mechanic's truck package they buy. BUT certain mechanics have different needs and things are added at time of purchase.	Yes. Base items with no options. Provide a list of options with pricing separetely as an attachment for each base item.

The State of Michigan
DTMB Central Purchasing

In conjunction with

Request for Proposals

Michigan Solicitation Number 210000000535

NASPO ValuePoint Master Agreement for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services AD4

January 4, 2023

About NASPO ValuePoint
NASPO ValuePoint is the cooperative purchasing division of the National Association of State Procurement Officials (NASPO), facilitating cooperative public procurement solicitations using a Lead State model.

About NASPO
The National Association of State Procurement Officials (NASPO) is a non-profit association dedicated to advancing public procurement through leadership, excellence, and integrity. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States.

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RFP Administrative Information

RFP Title:	Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services
RFP Project Description: (See Section 1.1)	The State of Michigan, in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide truck bodies, turnkey trucks and all associated equipment and services needed to complete the requirements of this solicitation.
RFP Lead: (See Section 1.2)	Yvon Dufour DTMB Central Procurement 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 249-0455
Submit electronically via www.michigan.gov/SIGMAVSS: (See Section 2.10)	Electronic Submission www.michigan.gov/SIGMAVSS
Pre-Proposal Conference #1: Pre-Proposal Conference #2: Pre-Proposal Conference Location: (See Section 2.4)	**1- January 17, 2023 (Tuesday) 1:00 pm Eastern** **2- March 14, 2023 (Tuesday) 1:00 pm Eastern** Microsoft Teams Meeting – see Section 2.4 for Details
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	**March 27, 2023 (Monday), 3:00 pm Eastern**
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted via email to dufoury@michigan.gov. Questions must be submitted by the question deadline date.
RFP Closing Date: (See Section 1.3)	**April 27, 2023 (Thursday)**
RFP Closing Time: (See Section 1.3)	3:00 pm Eastern
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be three (3) years with the option, upon mutual written agreement, for two (2) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSAL
Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services

Solicitation # 210000000535

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Michigan (Lead State), Department of Technology, Management and Budget, Central Purchasing Division is requesting proposals for Truck Bodies, Seasonal Maintenance Equipment & Upfitting Services in furtherance of NASPO Value Point's Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide truck bodies, seasonal maintenance equipment, & upfitting services for purchase and/or rental, parts, maintenance & repairs for Participating States.

Subject to the Lead State's sole discretion, this RFP may result in Master Agreement awards to a single, or multiple contractors.

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

This will be a new Master Agreement portfolio for the State of Michigan and NASPO ValuePoint.

1.2. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Michigan Department of Technology, Management and Budget, Central Purchasing Division is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is **Solicitation # 210000000535**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand

approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division is:

Yvon Dufour, Category Specialist
State of Michigan, DTMB, Central Purchasing Division
320 South Walnut
Elliott-Larsen Building, 2nd Floor N
Lansing, MI 48909
dufoury@michigan.gov
(517) 249-0455 Fax (517) 335-0046

1.3 Schedule of Events

Solicitation Release:	**January 4, 2023**
Pre-Proposal Conference #1:	**January 17, 2023 at 1:00 pm Eastern (13 days)**
Pre-Proposal Conference #2:	**March 14, 2023 at 1:00 pm Eastern (56 days)**
Question Deadline:	**March 27, 2023 at 3:00 pm (34 days)**
Closing Date and Time:	**April 27, 2023 3:00 pm (31 days)**
Anticipated Award Date:	**July 20, 2023 (84 days)**

All times are Eastern time unless indicated otherwise.

1.4. Definitions

The following definitions apply to this solicitation. The NASPO ValuePoint Master Agreement terms and conditions (Attachment A) and the Lead State Terms and Michigan Participating Addendum (Attachment G) also contain definitions of terms used in this solicitation.

Bidder means the company or firm who submits a proposal in response to this Request for Proposal.

Contract Administrator The person who is the single point of contact for this RFP on behalf of the Lead State and NASPO.

Contractor For the purposes of this RFP, means the successful Bidder who is awarded a Contract for providing all equipment and services described in the Contract documents.

Distributer (Dealer) Agreement document that identifies a manufacturer's independent dealer for services provided within the scope of this RFP.

Lead State means the State conducting this cooperative procurement, evaluation, and award.

Master Agreement(s) means the underlying agreement executed by and between the Lead State, acting in collaboration with the NASPO ValuePoint program, and the successful Contractor(s).

Offeror has the same meaning as Bidder.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating the Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions. The Lead State Terms and Conditions are also a Participating Addendum.

Proposer has the same meaning as Bidder.

Proposal means the official written response submitted by an Offeror in response to this Request for Proposal.

Request for Proposal or "RFP" means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

Supplier is any manufacturer, distributor, company, or any other entity providing units, components or subassemblies for inclusion in the final equipment item(s) described in the contract documents.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company dedicated to strengthening the procurement community through education, research, and communication. NASPO is made upof the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the 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. For more information consult the following websites: www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

The Lead State Terms and Conditions are located in Attachment F. In addition to the Lead State conducting this solicitation, states that have requested to be named in this RFP as potential users of the resulting Master Agreement are identified in Attachment G. This list neither guarantees participation by named states nor excludes participation by states or other entities that are not named. Participation will be determined on a state-by-state basis following execution of Master Agreement(s).

Some of the states listed in Attachment G may have included special or unique terms and conditions for their state that will govern their state's Participating Addendum in Attachment G. These terms and conditions are being provided as a courtesy to Proposers to indicate which additional terms and conditions may be incorporated into the state's Participating Addendum after award of the Master Agreement.

The Lead State will not address questions or concerns or negotiate any other Participating State's terms and conditions. The Participating States shall negotiate these terms and conditions directly with the Contractor. Any terms that may be contained in Attachment G are expressly excluded from incorporation into any resulting contract with the Lead State.

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Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1 Proposal Preparation

The Lead State recommends reading **all** RFP materials prior to preparing a proposal. Bidders must follow all instructions herein and provide a complete response to the items indicated in the table below. References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within the proposal. Include the Bidder's company name in the header of all documents submitted with your proposal.

RFP Structure and Documentation

Document	Description	Bidder Response Instructions
Executive Summary	Description of the Offeror's Proposal. Outlines major features of the Proposal. Should include requirements that cannot be met.	Bidder to complete and submit by proposal deadline
Request for Proposal	Provides RFP information and instructions to Bidders	Informational
Confidential Treatment Form	Required verification on whether Bidder's proposal contains confidential information	Bidder to complete and submit by proposal deadline

Document	Description	Bidder Response Instructions
Vendor Questions Worksheet	Questions to Bidders on background and experience	Bidder to complete and submit by proposal deadline
Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions	Provides general NASPO ValuePoint legal terms and conditions for a contract awarded through this RFP which are applicable unless superseded by terms contained within an applicable Participating Addendum	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment B – Statement of Work	Statement of work	Bidder to complete and submit by proposal deadline
Attachment C – Pricing	Pricing for goods and services sought through this RFP	Bidder to complete and submit by proposal deadline
Attachment D – RFP Evaluation Scoresheet	Evaluation criteria	Informational
Attachment E – Distributer/Dealer Agreement	Used for Manufacturers Independent Dealers (If applicable)	Informational
Attachment F – Lead State Terms and Michigan Participating Addendum	Provides legal terms for a contract with the Lead State of Michigan, as awarded through this RFP	Deemed accepted by Bidder unless modified in accordance with the requirements set forth in section 3.4 Evaluation Process and submitted by proposal deadline
Attachment G– Participating States	Provides a list of States interested in executing a contract(s) with awarded Contractors	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Contract
Exhibit 1 to Attachment G – Participating States' Legal Terms	Provides legal terms that may apply to a contract awarded through this RFP by Participating States, other than the Lead State	Informational – this Attachment is expressly excluded from and will not be incorporated into the terms of any resulting Master Agreement

2.2 RFP Question and Answer Process

Bidder questions about this RFP, including those about Terms and Conditions contained in Attachments A and G, must be emailed to the solicitation manager dufoury@michigan.gov no later than the time and date specified on the Cover Page. In the interest of transparency, only written questions are accepted.

The Lead State may refuse to answer questions received after the Question/Answer deadline.

Answers to questions will be posted on www.michigan.gov/SIGMAVSS. Submit questions using the format below; a Microsoft Excel format or similar is suggested.

Q #	Document and Section	Page #	Bidder Question

The identity of potential Offerors will not be published with the answers, but the text of questions will be restated, so Offerors are cautioned about including context in questions that may reveal the source of questions.

2.3 RFP Modifications

Changes to this RFP including but not limited to contractual terms and procurement requirements shall only be changed via written addenda issued by the Lead State.

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor www.michigan.gov/SIGMAVSS to obtain RFP addenda or other information relating to the RFP.

2.4 Pre-Proposal Conference #2 (Optional)

A pre-proposal conference will be held on **March 14, 2023, at 1:00 pm Eastern**, remotely via **Microsoft Teams**:

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 229 148 109 440
Passcode: HT9FKc
Download Teams | Join on the web
Or call in (audio only)
+1 248-509-0316,,34912860# United States, Pontiac
Phone Conference ID: 349 128 60#
Find a local number | Reset PIN
Learn More | Meeting options

Attendance at the conference is optional. Statements made by the solicitation manager or designee at a pre-proposal meeting are not considered modifications to the RFP. If, however, the solicitation manager determines modifications to the RFP are warranted after the meeting, modifications will be posted in writing on www.michigan.gov/SIGMAVSS as explained in the **Modifications** section of this document.

2.5 Proposal Due Date

Proposals must be received by the posted Closing date and time as described in the **Schedule of Events in Section 1.3** of this RFP. Proposals received after the deadline will be late and rejected.

2.6 Cancellation of Procurement

This RFP may be canceled at any time prior to award of the Master Agreement(s) if the Lead State determines, in its sole discretion, such action to be in the best interests of Participating States.

2.7 Governing Laws and Regulations

This procurement is conducted by the Lead State, Michigan, in accordance with the Michigan's Procurement Code, available at https://www.michigan.gov/documents/dmb/0510_182349_7.pdf

This procurement shall be governed by the regulations and laws of Michigan. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Michigan. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in **section 33** of the **NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.**

2.8 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date, after which time the Bidder will have the option to revoke any offers made through their response by providing written notice of revocation to the Lead State.

2.9 Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the Lead State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. In the event that the Offeror so restricts its Proposal, the Lead State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the Lead State and the NASPO ValuePoint cooperative program. The Lead State may otherwise determine at its sole discretion that such restriction is non-responsive and renders the Offeror ineligible for further evaluation.

2.10 Proposal Content and Format Requirements

Proposals must be detailed and concise. Most Proposal documents are provided in this RFP for the Proposers to complete and submit back to the Lead State **(See Bidder Response Checklist in this section, item 2.12 Required Format).** Each Proposal must be labeled and organized in a manner that is congruent with the requirements and

terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Statement of Work elements.

2.11 Proposal Submission Instructions

Electronic – The Bidder must submit its proposal, all attachments, and any modifications or withdrawals electronically through www.michigan.gov/SIGMAVSS. The price proposal should be saved separately from all other proposal documents. Attachment file size is limited to 6 MB per document. Bidder's failure to submit a proposal as required may result in disqualification. The proposal and attachments must be fully uploaded and submitted prior to the proposal deadline. **Do not wait until the last minute to submit a proposal**, as the SIGMA VSS system requires the creation of an account and entry of certain information, in addition to uploading and submitting the materials. The SIGMA VSS system **will not** allow a proposal to be submitted after the proposal deadline identified in the solicitation Closing On/Closing Date fields (Summary view/Detail view), even if a portion of the proposal has been uploaded.

Questions on how to submit information or how to navigate in the SIGMA VSS system can be answered by calling **(517) 284-0540 or (888) 734-9749**. The solicitation manager will not provide assistance related to the submittal of the proposal and all attachments on the day of the proposal deadline. Responsibility for a complete submission lies with the Bidder.

2.12 Required Format

The Bidder should submit all documents in the format indicated in the table below. Attachment file size is limited to 6 MB per document.

BIDDER RESPONSE CHECKLIST		
Document		**Bidder Response Instructions**
1.	**Executive Summary**	Submit as Microsoft Word or PDF document.
2.	**Confidential Treatment Form**	Submit as Microsoft Word document.
3.	**Vendor Questions Worksheet**	Submit as Microsoft Word document.
4.	**Attachment A – NASPO ValuePoint Master Agreement Terms and Conditions**	Submit in redlined format only if not accepted as written. Microsoft Word document.
5.	**Attachment B – Statement of Work**	Submit as Microsoft Word document.
6.	**Attachment C – Pricing**	Submit as Microsoft Excel document.

7.	**Attachment F – Lead State Terms and Michigan Participating Addendum**	Submit in redlined format only if not accepted as written. Microsoft Word document.
8.	**Product Specifications**	Submit as Microsoft Word or PDF document.
9.	**Dealer list (if applicable)**	Submit as Microsoft Excel document.
10.	**Complete Price List (should include all products and all their options and attachments)**	Submit as Microsoft Excel document.
11.	**Certified letter from each participating manufacturer(s) (See Attachment B, section B1.6 Contractual Solutions if applicable)**	Submit as Microsoft Word or PDF document.

2.13 Ownership or Disposition of Proposals and other Materials submitted.

All proposals shall be stored and disposed of electronically according to the applicable State of Michigan policy regarding retention period requirements.

2.14 Confidential Treatment Form and The Freedom of Information Act

All portions of the Bidder's proposal and resulting contract are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231, et seq. However, some information may be exempt from disclosure. Under MCL 18.1261(13)(b), records containing "a trade secret as defined under section 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902," are exempt from disclosure under FOIA. In addition, "financial or proprietary information" submitted with a Bidder's proposal is exempt from disclosure under FOIA. A Bidder's failure to comply with this Section is grounds for rejecting a Bidder's proposal as non-responsive. As a part of its proposal, each Bidder must follow the procedure below.

Submit a Completed "Confidential Treatment Form" (CT Form) With Your Bid. Completion and submission of the CT Form is required regardless of whether the Bidder seeks confidential treatment of information. Failure to submit a completed CT Form may be cause for disqualification from the solicitation process.

i. Complete and sign Section 1 of the CT Form if the Bidder does NOT request confidential treatment of information contained in its proposal; or

ii. Complete and sign Section 2 of the CT Form if the Bidder requests confidential treatment of certain information. Bidder must also submit a "Public Copy" of the proposal with the trade secret, financial, and proprietary information redacted and clearly labeled as the "Public Copy."

FOIA Requests. If a FOIA request is made for a Bidder's proposal, the Public Copy may be distributed to the public along with the Bidder's CT Form. The CT Form is a public document and serves as an explanation for the redactions to the Public Copy. Do

not put any trade secret, financial, or proprietary information in the CT Form. Do not redact the CT Form itself.

No Advice. The Lead State will not advise a Bidder as to the nature or content of documents entitled to protection from disclosure under FOIA or other laws, as to the interpretation of such laws, or as to the definition of trade secret or financial or proprietary information. Nothing contained in this provision will modify or amend requirements and obligations imposed on the Lead State by FOIA or other applicable law.

Failure To Request Confidential Treatment. Failure to request material be treated as confidential as specified herein relieves the Lead State, its agencies, and personnel from any responsibility for maintaining material in confidence.

Bids containing a request to maintain an entire proposal as confidential may be rejected as non-responsive. Bidders may not request confidential treatment with respect to resumes, pricing, and marketing materials. The Lead State reserves the right to determine whether material designated as exempt by a Bidder falls under MCL 18.1261 or other applicable FOIA exemptions. If a FOIA request is made for materials that the Bidder has identified as trade secret, financial, or proprietary information, the Lead State has the final authority to determine whether the materials are exempt from disclosure under FOIA.

Bidder forever releases the Lead State, NASPO, its departments, subdivisions, officers, and employees from all claims, rights, actions, demands, damages, liabilities, expenses and fees, which arise out of or relate to the disclosure of all or a portion of Bidder's proposal submitted under this RFP. Bidder must defend, indemnify and hold the Lead State and NASPO as well as their departments, subdivisions, officers, and employees harmless, without limitation, from and against all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to any FOIA request, including potential litigation and appeals, related to the portion of Bidder's proposal submitted under this RFP that Bidder has identified as a trade secret, or financial or proprietary information. The Lead State will notify Bidder in writing if indemnification is sought. The Lead State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, or any portion thereof, if the Lead State deems necessary. Bidder will not, without the Lead State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. If a Lead State employee, official, or law is involved or challenged, the Lead State may control the defense of that portion of the claim. Any litigation activity on behalf of the Lead State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the Lead State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

2.15 Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to the Lead State Terms and Conditions included in **Attachment F**, and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its sourcing team), the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception and would require a substantial proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language, or any other document contained within this RFP through their written inquiries about the RFP using the process in **Section 2.2**.

Moreover, Offerors are cautioned that award may be made on receipt of initial proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated. Further, the nature of exceptions will be considered in the competitive range determination if one is conducted. In the sole discretion of the Lead State, exceptions may be evaluated to determine: the extent to which the alternative language or approach poses unreasonable, additional risk to the state; is judged to inhibit achieving the objectives of the RFP; or whose ambiguity makes evaluation difficult and a fair resolution (available to all Offerors) impractical given the timeframe for the RFP. Exceptions may result in a Proposal being rejected as nonresponsive and the Lead State is under no obligation to consider exceptions.

CONFIDENTIAL TREATMENT FORM

INSTRUCTIONS. Complete either *Section 1* or *Section 2* of this CT Form and sign where indicated. This CT Form must be signed by the individual who signed the Bidder's proposal. A completed CT Form must be submitted with your proposal, regardless of whether your proposal contains confidential information.

Failure to submit a completed CT Form with your bid is grounds for rejecting the proposal as non-responsive. See the **Confidential Treatment Form** and **The Freedom of Information Act** (FOIA) sections of the *Proposal Instructions* for additional information.

Section 1. CONFIDENTIAL TREATMENT IS NOT REQUESTED

This section must be completed, signed, and submitted with the proposal if the Bidder does **not** request confidential treatment of any material contained in the proposal.

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is not requested.

RFP Number	RFP Title
Signature	Date

Printed Name, Title, Company

CONFIDENTIAL TREATMENT FORM

Section 2. CONFIDENTIAL TREATMENT IS REQUESTED

This section must be completed, signed, and submitted with the proposal if Bidder requests confidential treatment of any material contained in the proposal. Submission of a completed CT Form is required to request confidential treatment.

Provide the information in the table below. Bidder may add rows or additional pages using the same format shown in the table. Bidder must specifically identify the information to be protected as confidential and state the reasons why protection is necessary.

The CT Form will not be considered fully complete unless, for each confidentiality request, the Bidder: (1) Identifies the Proposal Page #, Section #, and Paragraph #, (2) Identifies whether the material is a Trade Secret (TS), Proprietary Financial Information (FI), or Proprietary Information (PI), (3) Explains the specific legal grounds that support treatment of the material as TS, FI, or PI. Bidders must provide a complete justification as to how the material falls within the scope of an applicable FOIA Exemption or relevant case law. Bidders must not simply cite to an applicable exemption or case name, and (4) Provides the contact information for the person at Bidder's organization authorized to respond to inquiries by the State concerning the material.

(1) Proposal Page #, Section #, Paragraph #	(2) Material is Trade Secret (TS), Proprietary Financial Information (FI), Proprietary Information (PI)	(3) Applicable FOIA Exemption with Written Justification	(4) Bidder Contact Information

By signing below, the Bidder affirms that confidential treatment of material contained in their proposal is requested and has attached to this form a redacted "Public Copy" of the Bidder's proposal.

RFP Number

RFP Title

Signature

Date

Printed Name, Title, Company

Section 3: Evaluation and Award

3.1 Right to Waive Minor Irregularities

3.1.1 Notice of Deficiency. The Lead State reserves the right to issue a **Notice of Deficiency** to all active Bidders, if the State determines after the proposal deadline that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a **Notice of Deficiency** timely may be cause for disqualification.

3.1.2 Clarification Request. The Lead State reserves the right to issue a **Clarification Request** to an individual requesting Bidder by email to clarify its proposal if the Lead State determines the proposal is not clear. Failure to respond to a **Clarification Request** timely may be cause for disqualification.

3.1.3 Reservations. The Lead State reserves the right to:

- **a)** Disqualify a Bidder for failure to follow these instructions.
- **b)** Discontinue the RFP process or cancel the Solicitation entirely at any time for any or no reason. The issuance of an RFP, your preparation and submission of a proposal, and the Lead State's subsequent receipt and evaluation of your proposal does not commit the Lead State to award a contract to you or anyone, even if all the requirements in the RFP are met.
- **c)** Consider late proposals if: (i) no other proposals are received; (ii) no complete proposals are received; (iii) the Lead State received complete proposals, but the proposals did not meet mandatory minimum requirements or technical criteria; or (iv) the award process fails to result in an award.
- **d)** Consider an otherwise disqualified proposal if no other proposals are received.
- **e)** Disqualify a proposal based on: (i) information provided by the Bidder in response to this RFP; (2) the Bidder's failure to complete registration on www.michigan.gov/SIGMAVSS ; or (3) if it is determined that a Bidder purposely or willfully submitted false or misleading information in response to the RFP.
- **f)** Consider prior performance with the Lead State in making its award decision.
- **g)** Consider overall economic impact to the Lead State when evaluating proposal pricing and in the final award recommendation. This includes but is not limited to: considering principal place of performance, number of Lead State citizens employed or potentially employed, dollars paid to Lead State residents, Lead State capital investments, job creation, tax revenue implications, and economically disadvantaged businesses.
- **h)** Consider total-cost-of-ownership factors (e.g., transition and training costs) when evaluating proposal pricing and in the final award recommendation.

i) Refuse to award a contract to any Bidder that has failed to pay Lead State taxes or has outstanding debt with the Lead State.

j) Enter into negotiations with one or more Bidders on price, terms, technical requirements, or other deliverables.

k) Award multiple, optional-use contracts, or award by Contract Activity.

l) Evaluate the proposal outside the scope identified in the Evaluation Process section of this document if the State receives only one proposal.

3.2 Discussions with Offerors – Oral Presentations

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

The Lead State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors.

The Lead State may, but is not required to, conduct an on-site visit to tour and inspect the Bidder's facilities; require an oral presentation of the Bidder's proposal; conduct interviews, research, reference checks, and background checks; and request additional price concessions at any point during the evaluation process.

3.3 Award of Master Agreement(s)

Award shall be made to the responsive and responsible Offeror(s) whose proposal is the most advantageous to Michigan and the NASPO ValuePoint cooperative program, taking into consideration price and the best combination of the factors stated in section **3.4 Evaluation Process**. This solicitation is intended to provide multiple contract awards in various categories. The Lead State will post an **Award Recommendation and Evaluation Synopsis** on www.michigan.gov/SIGMAVSS.

3.4 Evaluation Process

Phase 1 – Mandatory Minimum Requirements: In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

1. The Proposer must be a manufacturer or a Supplier authorized by the manufacturer to distribute the products they are offering. (Pass/Fail)

2. The Proposer must agree, if awarded a contract, that all "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. (Pass/Fail)

Phase 2: Technical Proposal Evaluation (100 points)

Evaluation Criteria (NOTE: The Lead State and NASPO reserve the right to use related Bidder responses from other sections of the RFP that are applicable to each section below)	Possible Points
Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function.* ***(If applicable, section B2. and B3. shall be scored separately)***	40 pts
Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 pts
Agreement with Lead State Terms and Conditions in Attachment F *Vendor Questions Worksheet Section 9*	15 pts
Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 pts
References: *Vendor Questions Worksheet Section 8*	15 pts
Total Technical Points	100 pts

Proposals receiving **80** or more technical evaluation points will have pricing evaluated and considered for award. See **Attachment D** – RFP Evaluation Scoresheet.

The Lead State may utilize all Bidder information, without regard to a proposal's technical score, to determine fair market value for goods or services sought. The Lead State is not obligated to accept the lowest price proposal. If applicable, the Lead State's evaluation will include consideration of a Bidder's qualified disabled veterans/service-disabled veteran owned business(QDV/SDVOB) status under MCL 18.1261(8). Additional information on the SDVOB preference is available at: Michigan.gov/SDVOB.

The Lead State strongly encourages strict adherence to the Lead State Terms and Conditions. The Lead State reserves the right to deem a bid non-responsive for failure to accept the Lead State Terms and Conditions. Nevertheless, the Bidder may submit proposed changes to the Lead State Terms and Conditions in track changes (i.e., visible edits) with an explanation of the Bidder's need for each proposed change. Failure to include track changes with an explanation of the Bidder's need for the proposed change constitutes the Bidder's acceptance of the Lead State Terms

and Conditions. General statements, such as that the Bidder reserves the right to negotiate the terms and conditions, may be considered non-responsive.

3.5 Notice of Intent to Award

After a final selection(s) is made, the Lead State will issue an intent-to-award announcement on www.michigan.gov/SIGMAVSS, its electronic procurement system. Proposal files are public records and available for review at the offices of the Lead State by appointment.

3.6 Debrief Meeting and Bid Protest

The Lead State will post an ***Award Recommendation and Evaluation Synopsis*** which will provide instructions on how to request a debrief meeting.

If you wish to initiate a protest of the award, you must submit your written protest electronically at BidProtest-DTMB@michigan.gov no later than 3:00 pm Eastern, 5 calendar days after posting the ***Award Recommendation and Evaluation Synopsis*** on SIGMA VSS, or by 12:00 pm Eastern, the next business day if that date falls on a state holiday or weekend. The Lead State reserves the right to adjust this timing and will publish any change on the SIGMA VSS.

Additional information about the protest process is available at www.michigan.gov/micontractconnect under the “Programs and Policies” link.

3.7 Post Award Formalization of the Master Agreement

The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State’s judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating States, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Offerors or elect to make no award under this RFP.

3.8 Lead State Administrative Board

Contracts equal to or greater than $250,000 require approval by Michigan’s State Administrative Board. The State Administrative Board’s decision is final; however, its approval does not constitute a contract. The award process is not complete until the awarded contractor receives a contract fully executed by all parties.

Section 4: Administrative and Technical Response Requirements

4.1 Mandatory Minimum Administrative Proposal Requirements

This section contains the minimum requirements that must be met in order to be considered for the evaluation phase. All of the items described in this section are non-negotiable. All Offerors must state willingness and demonstrate ability to satisfy these requirements in the proposal submitted for consideration.

To avoid disqualification, the Bidder must provide documentation to support the following:

- Bidder must be the manufacturer or be authorized by the manufacturer to distribute the products they are offering.
- If a Bidder is only authorized to sell a product in a specific region, that Bidder must indicate which states they are authorized to distribute the product(s).
- All **"catalog"** pricing must be published and available at all times during the term of the Contract via website access, and/or electronic/printed price pages.

4.2 NASPO ValuePoint Master Agreement Statement of Compliance

The NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the **NASPO ValuePoint Standard Terms and Conditions (Attachment A)** and **Lead State Terms and Conditions (Attachment F)** required to execute a master agreement, the **Statement of Work (Attachment B)** and selected portions of the Offeror's Proposal.

Offeror must include a statement in **Section 9 of "Vendor Questions Worksheet"** that they have read and understand all of the terms and conditions as shown in the **NASPO ValuePoint Terms and Conditions (Attachment A).**

4.2.a Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in the Lead State at the prescribed levels set forth in Section 5 of **Attachment F.** The Offeror shall indicate agreement with the insurance requirements for this RFP in **section 10 of the Vendor Questions Worksheet**.

4.2.b NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in **Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A)**. Moreover, specific summary and detailed usage reporting

requirements are prescribed by **Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A).**

4.2.c Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. Technical and management evaluation factors may include evaluation of: the likely effectiveness of the Offeror's promotion of the Master Agreement; the Offeror's understanding of and approach to administration of and reporting under the Master Agreement; the risk that Offeror's contractual obligations to other procurement cooperatives' may impede achievement of the objectives of the ValuePoint cooperative procurement program, in which case awards could be Lead-State-Only awards. In this regard, the Proposer must complete **Section 5 of the Vendor Questions Worksheet**.

4.2.d Usage Fee and Reporting Plan

Offerors shall include in their proposals a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately. Requirements for Lead State are included in **Attachment F.**

4.3 Lead State Terms and Conditions

Refer to **Attachment F** for the Lead State Terms and Conditions that apply to this solicitation. Offeror shall indicate in their Proposal that they have read and understand all of the requirements shown in the Lead State Terms and Conditions.

4.4 Participating State Terms and Conditions

For informational purposes only, some Participating State specific Terms and Conditions are provided in Attachments to this solicitation 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. Offeror shall note in section 9. of the Vendor Questions Worksheet, that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

4.5 Technical Requirements

Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. When completing the applicable sections of this RFP, the Offeror must identify in their Proposal how their company meets (or exceeds) all

requirements.

4.5.1 Statement of Work

Offeror shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the **Statement of Work** in **Attachment B**. Offeror shall show each requirement and their response in their Proposal.

4.6 VENDOR QUESTIONS WORKSHEET

Provide a detailed response to each question. “You” and “company” refers to the Proposer.

Information Sought	Bidder Response
1. Contact Information	
Bidder’s sole contact person during the RFP process. Include name, title, address, email, and phone number.	
Person authorized to receive and sign a resulting contract. Include name, title, address, email, phone number and vendor customer code in SIGMA VSS.	
2. Company Background Information	
Legal business name and address. Include business entity designation, e.g., sole proprietor, Inc., LLC, or LLP.	
What state was the company formed in?	
Phone number.	
Website address.	
Number of years in business and number of employees.	
Legal business name and address of parent company, if any.	
Your client retention rate during the past 3 years.	
Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
Discuss your company’s history. Has growth been organic, through mergers and acquisitions, or both?	
Has Bidder ever been debarred, suspended, or disqualified from bidding or contracting with any governmental entity, including without limitation the State of Michigan? If yes, provide the date, the entity, and details about the situation.	

Has your company been a party to litigation against the Lead State or any other state or U.S. territory? If the answer is yes, then state the date of initial filing, case name and court number, and jurisdiction	
Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
State your gross annual sales for each of the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	
Describe partnerships and strategic relationships you think will bring significant value to the State and/or Participating Entities.	
State the physical address of the place of business that would have primary responsibility for this account if Bidder is awarded a contract under this RFP.	
3. Customer Service & Proposer's Ability to Provide Nationwide Sales, Delivery, & Service	
What are your hours of operation and when are key account people available to us?	
Describe how problem identification and resolution will be handled.	
How will you service Lead State's account? Describe the system you will use to manage Lead State's account. Describe the system you will use to manage other state's or U.S. territory's account(s), if different. If the same, please indicate as much.	
How do you respond to customer complaints and service issues?	

Have you ever had a recall situation for any of your equipment/products; and if yes, approximately how much of an impact was it to the company to repair/replace the equipment?	
How do you assess customer satisfaction?	
What are your quality assurance measures and how are they handled in your organization?	
How long does it take to produce a typical piece of equipment (base model, not special order)?	
Are all of your most popular equipment/products (base model, not special order) maintained in inventory?	
Do you, the manufacturer, or your dealers in your network offer any value-added incentives to purchase, such as seasonal sales, and if so, how would you incorporate special sale situations in the contract?	
Is your dealer network in every state in the U.S. and U.S. Territories? If no, where are you lacking coverage?	
Describe how your dealers are chosen.	
Describe any mandatory training for your dealers that is required to maintain authorization of their distribution privileges.	
Are your dealers considered employees or independently owned businesses?	
Does one or more of your employees check-in with your dealers for purposes of auditing, inspection of premises, reporting procedures, or other on a regular basis?	
If your dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports.	
If payment is made to your independently owned dealer for your equipment/product(s), how is that addressed in your company's policies?	

Do you offer extended warranties for your products? If yes, explain your extended warranties and provide the terms of your extended warranty plans. Also, will you offer discounts on your extended warranties?	
Describe your system that Purchasing Entities would use to place orders and receive results. Include all methods of order submission.	
Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.	
What measures do you take to protect sensitive customer information?	
Describe any product, equipment, maintenance, or operator training programs that you provide as part of any resulting contract. Please include details, such as whether training is standard or optional, who provides training, and any costs that apply.	
Describe your company's capability to meet the needs of the Lead State and other NASPO members across the country. Your response should address at least the following areas: - Sales Capabilities - Dealer Network or other means of distribution (If applicable, provide Dealer List) - Service Capabilities Please include details, such as the locations of your network of sales and service providers, the number of workers (full- time equivalents) involved in each sector, whether these workers are your direct employers (or employees of a third party), and any overlap between the sales and service functions.	
Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract.	
If any, please describe any specific contract requirements or restrictions that would be applicable only to NASPO Members outside of the contiguous US states, such as Hawaii, Alaska, and/or any US Territories.	

If you are awarded a contract, how will you train your sales management, dealer network, and direct sales teams (whichever apply) to support the customers of the resulting contract? Please include how you will provide sales and support coverage for customers nationally.	
4. Industry Recognition & Marketplace Success	
List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	
Indicate separately what percentages of your sales are to the government and education sectors in the past three years?	
Describe any relevant industry awards or recognition that your company has received in the past five years.	
5. Promoting the use of the Master Agreement (Per Request For Proposal section 4.2c.)	
Describe your company's experience working with contracting cooperatives.	
List the cooperatives through which you currently have a contract and provide sales volume information for each. Identify any restrictions on pricing and sales imposed by your other cooperative contracts.	
Describe how you intend to market your Master Agreement and encourage participation among potential Participating Entities, including state governments.	
Describe how you intend to encourage usage of your Master Agreement by Purchasing Entities.	
Describe your approach to negotiation of Participating Addenda. Describe the extent to which you 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?).	
6. Qualified Disabled Veteran/Service-Disabled Veteran-Owned Business Program	
Under MCL 18.1261, a "qualified disabled veteran" means a business entity that is 51% or more owned by 1 or more veterans with a service-connected disability. A "service-connected disability" means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16). Are you a qualified disabled veteran?	**Enter YES or NO.**
To demonstrate qualification as a qualified disabled veteran, you must provide: (a) Proof of service and conditions of discharge (DD214 or equivalent); (b) Proof of service-connected disability (DD214 if the disability was documented at discharge or Veterans Administration Rating Decision Letter or equivalent if the disability was documented after discharge); and (c) Legal documents setting forth the ownership of the business entity. In lieu of the documentation identified above, you may provide proof of certification by the National Veterans Business Development Council.	Enter the names of documents submitted with your proposal to demonstrate status as a qualified disabled veteran.
7. Participation in RFP Development or Evaluation	
Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third-party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or	**Enter YES or NO.**

ownership, identity of interests among family members, shared facilities or equipment, and common use of employees.	If you enter “YES”, you are not eligible for contract award or to work as a subcontractor for the awarded vendor.
If you are awarded a contract under this solicitation, in order to provide the goods or services required under a resulting contract, do you intend to partner or subcontract with a person or entity that assisted in the development of this solicitation?	**Enter YES or NO.** If you enter “YES,” you are not eligible for contract award. An awarded vendor may not partner or subcontract with anyone to provide goods and services required under a resulting contract if that subcontractor or partner assisted in the development of this solicitation.
Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP?	**Enter YES or NO.** If you enter “YES”, you are not eligible for contract award or to work as a subcontractor for the awarded vendor.
8. State Government Experience and Prior Experience	
Does your company have experience working with the state governments? If so, please provide a list (including the contract number) of the contracts you hold or have held with the any state government customer for the last 10 years.	
Describe at least **3** relevant experiences from the last **5** years supporting your ability to successfully manage a contract of similar size and scope (regardless of contracting state) for the work described in this RFP.	
Experience 1	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	

Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 2	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained.	
Experience 3	
Company name. Contact name. Contact role at time of project. Contact phone. Contact email.	
City. State. Zip.	
1. Project name and description of the scope of the project. 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value.	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	

Results obtained.	
9. Contract Terms	
Attachment A – NASPO ValuePoint Standard Contract Terms: Bidder must affirm agreement with the attached NASPO ValuePoint Standard Contract Terms. If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Attachment F– Lead State Terms and Michigan Participating Addendum **:** Bidder must affirm agreement with the attached Lead State Terms and Conditions . If not in agreement, written exceptions in accordance with the Evaluation Process section of the Proposal Instructions must be provided with Bidder's proposal.	
Bidder understands they may be required to negotiate additional terms and conditions when executing a Participating Addendum as indicated in section **4.4 Participating State Terms and Conditions**.	**Enter YES or NO.**
10. Insurance Requirements	
Bidder must affirm agreement with the insurance requirements in **Section 5** of **Attachment F.**	
11. Michigan Economic Impact	
Number of employees currently employed at locations within the State of Michigan.	
Number of additional employees to be employed at locations within the State of Michigan if awarded this Contract (if any)	
Minimum wage paid to employees employed at locations within the State of Michigan.	
Average wage paid to employees employed at locations within the State of Michigan.	
Percentage of employees employed at locations within the State of Michigan that are covered by employer-provided health insurance.	
12. Labor and Environmental Laws Compliance	
Bidder must disclose any violations of state or federal labor and employment laws and regulations received within the past five years.	

Bidder must disclose any violations of state or federal environmental laws and regulations received within the past five years.	
13. Other	
Classification of Employees. I certify that the company has properly classified its employees in accordance with federal/state labor and employment laws.	**Enter YES or NO.**
Abusive Labor Practices. The Contractor certifies that it will not furnish any Deliverable that was produced fully or partially by forced labor, forced or indentured child labor, or indentured servitude.	**Enter YES or NO.**
Certification of Michigan Business- Public Act 431 of 1984, Sec. 268. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Business Tax Corporate Income Tax Return. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, filed a Michigan Income Tax return showing income generated in, or attributed to the State of Michigan. I certify that the company has, pursuant to the provisions of Sec 268 of Public Act 431 of 1984, withheld Michigan Income Tax from compensation paid to the company's owners and remitted the tax to the Michigan Department of Treasury.	**Enter YES or NO.**
Iran Linked Business- Public Act 517 of 2012. I certify that the Company is not an Iran-Linked business as defined by Public Act 517 of 2012.	**Enter YES or NO.**
Clean Corporate Citizen. I certify that the Company is a Clean Corporate Citizen as defined by the Environmental Protection Act, 1994 PA 451.	**Enter YES or NO.**
Convict Labor. The Contractor certifies that if using convict labor, it is complying with all applicable state and federal laws and policies.	**Enter YES or NO.**
SOM Debt/Tax Payment. All SOM tax/debts. I certify that all applicable State of Michigan taxes are paid, and that no outstanding debt is owed to the State of Michigan.	**Enter YES or NO.**

Authorization to Verify Information Provided by Vendor. I authorize the State to verify that all information provided in this registration, in bidding and contracting documents, and any attachments or supplement documents and processes are accurate.	**Enter YES or NO**.

Section 5: Price and Cost Proposal

The Cost Proposals will be evaluated independent of the technical evaluation. Cost proposals must be submitted to the Lead State as a separate document in the Offerors' Proposals. **Do not embed the cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per **Attachment C.**

Cost for the NASPO ValuePoint Master Agreements shall be based on the following:

Offeror must include all applicable costs, prices, and rates as required by **Attachment C**, Pricing. Prices and rates shall include all applicable anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

Freight from any Contractor to the dealer network locations within the lower 48 states will not be paid by the purchasing entity. Any additional freight applicable to shipments to the nearest port of Alaska and/or Hawaii must be provided.

The Lead State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Offeror's or any subcontractor's employee's wages. The Lead State will pay for any applicable Lead State or local sales or use taxes on the products provided or the services rendered within the Lead State. If required by Lead State, taxes shall be included as a separate line item on an Offeror's invoice. The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

5.1 Price and Rate Guarantee Period

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

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

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

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

2. Definitions

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

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

Embedded Software means one or more software applications which permanently

reside on a computing device.

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

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

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

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

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

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

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum. The Lead State is also a Participating Entity.

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

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

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

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

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

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

4. Amendments

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

5. Participants and Scope

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

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

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

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

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

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

g. **Resale**. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell

Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

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

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

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

(6) Purchase Order date; (7) Ship Date; (8) and line item description, including (if applicable) pricing for each: chassis, body/equipment item, and installation by product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is Microsoft Excel or equivalent.

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

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

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

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

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

b. Contractor agrees, as Participating Addendums become executed, if requested by

ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

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

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

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

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 26, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 26 or to terminate for default pursuant to section 28.

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

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or

effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Price and Rate Guarantee Period

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

11. Individual Customers

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

Administration of Orders

12. Ordering

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

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

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

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

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

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

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

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

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

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

13. Shipping and Delivery

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

b. All deliveries will be "Inside Deliveries" as designated by a representative of the

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

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

14. Laws and Regulations

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

15. Inspection and Acceptance

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

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

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

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the

process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

16. Payment

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

17. Warranty

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor’s skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under

this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

18. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

General Provisions

19. Insurance

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

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

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

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

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

d. Prior to commencement of performance, Contractor shall provide to the Lead State a

written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

20. Records Administration and Audit

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

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

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

21. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

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

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

22. Public Information

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

23. Assignment/Subcontracts

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

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

24. Changes in Contractor Representation

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

experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

25. Independent Contractor

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

26. Cancellation

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

27. Force Majeure

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

28. Defaults and Remedies

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

(1) Nonperformance of contractual requirements; or

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

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

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

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

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

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

(1) Exercise any remedy provided by law; and

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

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

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

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

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

29. Waiver of Breach

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

30. Debarment

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

31. Indemnification

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

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

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

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

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

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

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

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor.

If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

32. No Waiver of Sovereign Immunity

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

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

33. Governing Law and Venue

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

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

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of

priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

34. Assignment of Antitrust Rights

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

35. Contract Provisions for Orders Utilizing Federal Funds

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

36. Leasing or Alternative Financing Methods

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

Attachment B – Statement of Work

B1. SCOPE & FUNCTION REQUIREMENTS

B1.1 Scope –The Lead State of Michigan Department of Technology, Management and Budget, Central Purchasing Division, in collaboration with NASPO ValuePoint is focused to competitively solicit and award to the Proposers that demonstrate they can provide the broadest scope of required equipment, at the most competitive pricing available (best value: quality versus cost), to all States and Territories of the USA.

Bidders shall demonstrate they are qualified to provide, all or a portion thereof, of equipment/products and all related services necessary to deliver equipment/products to Purchasing Entities within standards or codes regulated by the industry and the law**.**

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.2 Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – The focus for this RFP is to provide equipment that is self-propelled (turnkey) or mounted to a chassis. The cost proposal in Attachment C – Pricing reflects that. Many Bidders may also provide additional equipment that does not meet the "self-propelled" or "chassis mounted" criteria. The lead State and NASPO's intent is to include all associated equipment in a contract award to successful Proposers. Proposers that do not meet the criteria for "self-propelled" or "chassis mounted" equipment but do provide comparable equipment as those listed in the Attachment C, may submit a proposal. The Proposer shall insert their pricing information on the Attachment C, in the "other" section within the most applicable category.

Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services shall include, but is not limited to:

a) Aerial Equipment - boom cranes, buckets, digger derricks, knuckle booms, platforms and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Aerial Equipment".

b) Refuse Equipment – Refuse/recycling bodies, Gripper systems, lift systems, loader-hopper bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of "Refuse Equipment".

c) Roadway Equipment – Asphalt distributer bodies, live bottom bodies, asphalt

flusher/sprinkler bodies, asphalt hot box/recycler, pothole patchers, roll-off patchers, asphalt sealers, dump bodies, service bodies, road ditch maintenance, van service bodies, roll-off cable hoists, hydro excavators, sprayers, lube skids, grease disposal, tanks, mechanic bodies, street sweepers, loading/grapple, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Roadway Equipment”.

d) Snow & Ice Equipment – Airport equipment, sweepers, liquid de-icing systems, salt/sand spreaders, snow melters, plows, blades, blowers, wings, specialty vehicles, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Snow and Ice Equipment”.

e) Vacuum/Sewer Equipment – tanks, flushing systems, catch basin cleaners, vacuum excavators, water recycling, vacuum bodies, and parts, supplies, and accessories related to the upkeep, repair or maintenance of “Vacuum/Sewer Equipment”.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.3 Out of Scope - This solicitation should NOT be construed to include any of the following:

Construction and agricultural equipment, including but not limited to dozers, loaders, excavators, skid steers, agricultural tractors, mowers, trailers for hauling, and truck chassis (stand-alone).

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.4 Solutions Based Solicitation - Because of the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the State of Michigan and NASPO are asking Bidders to provide solutions that meet industry and legal standards for the complex scope of truck upfitting.

The State of Michigan and NASPO ValuePoint RFP is a solicitation that does not contain detailed specifications. However, equipment guidelines are provided for pricing and evaluation purposes per Attachment C. Where items are specified, those items

should be considered the minimum required.

When proposing solutions, successful Bidders should focus on the State's and NASPO's "Ultimate Goal". **The "Ultimate Goal" of this RFP is to provide a broad scope of needed equipment with all associated services (sales, warranty, parts, and maintenance & repair) to Purchasing Entities of all States and Territories of the USA, while providing the most competitive pricing available (Best Value) to Participating States.** The Bidders proposed business approach is the solution provided to achieve the "Ultimate Goal". It may be exactly how a Proposer conducts business currently, or it may be a slightly different approach in order to better achieve the "Ultimate Goal". For examples see **B. 1.5 and B.1.6** below. Proposals will be evaluated, in part, on the Bidders' demonstrated ability to meet or exceed the "Ultimate Goal". It is recommended that Proposers submit their complete line of products and services described in the scope of this RFP. The Lead State and NASPO, reserve the right to accept any or all equipment/products and services proposed for award, for any reason.

The contractual solutions outlined in **B.1.6 a) and b)** are suggested, however, other proposed equitable contractual solutions shall be considered. Each primary equipment category will be awarded to one or more Bidders provided each category receives responsive, responsible bids. Due to the customization factor and the potential for multiple layers of pricing for upfitting equipment and services, the pricing model shall be one or a combination of the following:

i) applicable quoted base pricing per proposed **Attachment C Pricing** including, but not limited to chassis, equipment item, installation, and delivery,
ii) "Percentage off" of the Supplier's most current dated government or commercial catalog or price list, and
iii) quoted installation per applicable hourly rate.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.5 Business Solutions - The following items are suggested business solutions. The Proposer may provide a combination of any one of these solutions. The Lead State and NASPO are seeking Contractors that can provide the broadest scope of needed equipment, with all associated services (sales, warranty, rental, parts, and maintenance & repair). The Lead State and NASPO reserve the right to award one, all, or any combination of the following suggested solutions. **(Stand-alone contracts for rental, parts, and maintenance & repair will not be awarded. Rental, parts, and maintenance & repair shall only be included to awarded "Sales" contracts)**

a) Equipment Only – Purchasing Entity's intent is to purchase only the equipment/products to install themselves or have a third-party installer provide the installation services.

b) Equipment with Installation – Purchasing Entity's intent is to purchase equipment/products and have the Proposer, or their Dealer/Distributer, provide the installation services on a chassis provided by the Purchasing Entity.

c) Turn-Key – Purchasing Entity's intent is to purchase equipment/products installed on a chassis. The chassis is included in the purchase, providing the Purchasing Entity with a complete, fully functional vehicle ready for its intended function.

d) Equipment Rental – Purchasing Entity's intent is to rent "Turn-Key" equipment/products rather than purchase. **(Stand-alone contracts for equipment rental will not be awarded)**

e) Equipment Parts – Purchasing Entity's intent is to purchase replacement parts for previously purchased equipment/product. **(Stand-alone contracts for equipment parts will not be awarded)**

f) Maintenance & Repair Service – Purchasing Entity's intent is to acquire maintenance and repair service from the Contractor. **(Stand-alone contracts for Maintenance & Repair Service will not be awarded)**

Any deviations from industry standards must be identified by the Proposer. The Proposer must explain how the equipment/products and services they propose will provide equivalent performance and functionality in all applicable aspects. Failure to do so may result in the rejection of the proposal, in whole or in part.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B1.6 Contractual Solutions

a) Manufacturer as Contractor - Contractors may offer any brand for which they are a manufacturer. Sales, installation, parts, maintenance, repair, and warranty service would be achieved via the manufacturer's brick & mortar locations, and/or their dealers, distributers, or possibly their own or a third-party mobile maintenance/repair/warranty service provider. This solution would likely cover many States for sales & service requirements. However, the equipment selection would be limited to the manufacturer's offerings.

With their response to this solicitation, suppliers must provide a complete Microsoft Excel spreadsheet listing of all dealers or authorized representatives

within the entire area to be covered. Minimum Dealer information required is the name of business, address, contact name(s), phone number(s) and email address(es) and website(s).

b) Distributor/Dealer as Contractor - Contractors may offer any brand for which they sell and service as an authorized distributor/dealer[1]. Sales, installation, maintenance, repair, and warranty service would be achieved via the distributer's and/or manufacturers' brick & mortar locations, manufacturers' dealers, and/or possibly their own, their manufacturers' or a third-party mobile maintenance/repair/warranty service provider. This solution would enable a regional distributer/dealer to provide multiple brands to many more states and territories.

Bidding distributor/dealers seeking to submit a proposal with this type of structure would be required to do the following:

i. Submit with your bid, a certified letter, from each participating manufacturer, that communicates agreement to participate with this contractual arrangement, and shall provide the most competitive pricing commensurate with a national cooperative contract with NASPO.
ii. Submit with your bid, from each participating manufacturer, a complete list of their authorized dealers in all states.
iii. If awarded a contract, Bidder will be required to negotiate Participating Addenda with each state wishing to participate in this agreement, and provide all other administrative services necessary to execute, manage and maintain their contract with each participating State, including, but not limited to, providing contract spend reports, process payments for the required administrative fees on a regular basis (quarterly), and process necessary addenda for contract activities.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

[1] **Please refer to items i, ii, and iii in this section.**

B1.7 Contractor Responsibility - The Lead State and NASPO require a Contractor to take responsibility for the performance of all delivered equipment/products and services. It is assumed the Contractor retains sub-contractors in one or several functions required to provide products and services to the Purchasing Entity. The responsibility for all actions pertaining to delivery of product and services by sub-contractors would ultimately fall upon the Contractor.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B1.8 Disclosure of Subcontractors
If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor. Of the total bid, the price of the subcontractor's work. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- Authorized Dealer's are not considered a "Subcontractor" for the purposes of this solicitation.

Bidder must provide detailed information as requested in the requirement(s):

The legal business name, address, telephone number of the subcontractor(s):	
A description of subcontractor's organization and the services it will provide and information concerning subcontractor's ability to provide the Contract Activities:	
The relationship of the	

subcontractor to the Bidder:	
Whether the Bidder has a previous working experience with the subcontractor. **If yes, provide the details of that previous relationship:**	
A complete description of the Contract Activities that will be performed or provided by the subcontractor:	
Of the total bid, the price of the subcontractor's work:	

B2. RENTAL REQUIREMENTS (Optional)

B2.1 Specification (Guidance)

Contractor shall provide Equipment for rental per **Attachment C, Pricing**. **(Stand-alone contracts for equipment rental will not be awarded).** The Supplier must include the following:

i. Only listed items that meet these requirements shall be included under this contract
ii. Daily, weekly, and monthly rental rates.
iii. Percentage discount offered by category for such rates.

The Contractor must provide deliverables, including the staffing to accomplish all service incidentals necessary to complete the work, as set forth in this solicitation.

a) The Contractor must provide make and model of all equipment offered for rental. Brand or trade names provided by the Contractor are for identification purposes, and do not limit the Contractor to such brands, provided alternates offered are equal in quality and function to those specified.

b) All rental equipment is to meet or exceed applicable federal and state safety standards as mandated by OSHA, and MIOSHA Motor Carrier Division. This equipment is to meet or exceed applicable American National Standards Institute (ANSI) specifications. The Contractor will provide written documentation guaranteeing compliance with all safety standards.

c) The Contractor shall provide written documentation confirming satisfactory testing on equipment where mandated by law (to include but not limited to: stress testing, dielectric testing, visual inspections) completed by a licensed and reputable testing firm.

d) Rental equipment shall be no more than four (4) years old.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.2 Availability and Delivery of Equipment

a) All requested orders must be delivered within two (2) calendar days/48 hours after receipt of order.

b) Emergencies will be responded to within one (1) to six (6) hours. Equipment shall be available as both F.O.B. delivered and F.O.B. pick-up.

c) No premium rates will be charged for delivery after normal business hours.

d) Rental or leased equipment items shall be fully fueled and operational at the time of pick-up or delivery.

e) The Contractor will be required to perform a walk-around equipment inspection at the time of delivery and pickup.

f) The Contractor (or their designee) and the Program Manager (or their designee) shall document the inspection by mutual execution of an inspection document provided by the Contractor.

g) The Purchasing Entity is responsible for refueling all rented equipment upon its return.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.3 Maintenance/Service

a) The Contractor will be responsible for all maintenance/service necessary to maintain satisfactory operation of rental equipment at no cost to the Purchasing Entity.

b) Equipment shall be serviced according to manufacturer specifications. The Contractor shall maintain an equipment schedule for service and retain complete lifetime service records for all equipment.

c) If a repair is needed and requires the piece of equipment to be out of service, the Contractor shall provide a replacement.

d) Contractor will maintain a Dedicated Product Support Department to ensure proper function of rented or leased equipment.

e) On-site maintenance must be performed according to the recommended manufacturer maintenance schedule.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B2.4 Training

The Contractor must provide the following training:

An orientation training shall be provided upon request at the time of delivery. The training shall be deemed sufficient by the Purchasing Entity, to include detailed equipment operation and minor maintenance and inspection practices.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3. PARTS, MAINTENANCE & REPAIRS REQUIREMENTS (Optional)

B3.1 Parts - (Stand-alone contracts for equipment parts and maintenance and repairs will not be awarded) Quality of Parts under these specifications should be name brand, nationally advertised merchandise. Equivalent substitutions must be approved by the agency contact person. Aftermarket Repair parts must be equal to or exceed Contractor original equipment manufacturer's (OEM) specifications. Repair parts must be packaged and distributed under their respective nationally known name brands. All rebuilt or remanufactured parts must meet the same requirements as listed above. Some repair parts may be required to be original equipment manufactured repair parts Contractor's dealer network must carry a complete line of OEM parts for all models of equipment they carry. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.2 Warranty/Buy Back - Contractor are 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 Purchasing Entity. A copy of the Warranty shall be included for replacement parts purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B3.3 Maintenance/Repair Facilities - Repair Facilities that will perform the warranty work of items under this Contract shall be identified as the Supplier's dealer network. The manufacturer, whether contracted directly, or associated with the Distributer by certified letter, is responsible for ensuring that the facilities are able to adhere to the contract requirements for warranty work performance.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4. GENERAL REQUIREMENTS

B4.1 Licensing - Sales of motor vehicles are subject to state Motor Vehicle Statutes. License requirements for states participating in the contract will be addressed in each state's participating addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.2 Warranty - Equipment/Options/Accessories/Attachments. The Contractor agrees the products furnished under this Contract shall be covered by all commercial

warranties the Contractor or, if Contractor is a supplier only, that the product manufacturer 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. The Contractor warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the agency contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no additional cost to the agency. Supplier 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. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment: Name of Purchasing Entity and division, if applicable. Make, Model, VIN, and equipment control number of Purchasing Entity (Inventory number). Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this contract shall be authorized by the supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by trained certified, or authorized service technicians. Equipment that will remain in the supplier'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 chassis and equipment in the Contractor's possession.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.3 Ordering - No minimum orders will be considered under this Contract. Orders should not be implemented by the Purchasing Entity solely on the Contractor's catalog. The Catalog shall be used as a guide for identifying available equipment and options, and a source for confirming quoted pricing from the Contractor. The Purchasing Entity should **always** contact the Contractor's applicable point of Sale prior to issuing a Purchase Order. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Supplier's manufacturer/dealer for the

equipment being purchased. Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.4 Payment - Contractor must accept mailed and electronic payments.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.5 Documents - Contractor shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, and with the product invoice, or at the request of the Purchasing Entity. At the Contract Administrator's or Purchasing Entity's request, Suppliers shall provide catalogs and current price lists at no charge. A copy of the catalog pricing page or price list is to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in Attachment C Pricing.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.6 Changes in Contractor Contact - The Supplier shall notify the Contract Administrator 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 Contract Administrator shall be able to contact the Supplier at all times during business hours.

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.7 Invoices - To ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure the invoice shall include the following information: Purchase order number if applicable. Make, model, and VIN number of equipment. Name of Purchasing Entity. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided. The Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering party for their accounting purposes. Name of company who provided the products/services.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.8 Prompt Payment Discounts - Prompt payment discounts will not be considered in the evaluation of offers. However, any discount offered will be annotated on the award and may be taken if payment is made within the discount period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.9 Delivery - Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Supplier until delivered and accepted. Delivery shall be made in accordance with instructions on the purchase order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, the Supplier shall seek clarification from the ordering party and/or the Contracting Officer. Delivery on parts is to

be made within 30 days. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost. Some ordering entities will have the capacity to pick up their equipment from the dealer.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.10 Training - Supplier shall provide information for all training opportunities for the equipment being purchased, including CDs, DVDs, in house, orientation type training, maintenance, and operator.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.11 Pricing - The State is requesting pricing for new equipment within the scope of this RFP for Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services for purchase and/or rental, parts, maintenance & repairs. Specification guidelines are provided within the Pricing table per **Attachment C**, using the Good/Better/Best model for pricing similar models of equipment within the same equipment usage category. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers may submit actual pricing with the percentage discount already applied, as long as the Supplier list price is stated first, then the discount, then the final discounted price.

Pricing is firm for a 365-day period ("Pricing Period"). The first pricing period begins on the effective date of the Contract. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period. Only one price adjustment is allowed per "Pricing Period".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.12 Price Adjustments - Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes for no longer than 30 days, unless extended by mutual agreement. If no agreement on an adjusted price is achieved after 30 days of negotiation, the Participating Entity may remove the item from the list of offerings, at its sole discretion.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.13 Special Pricing - During periods of market instability due to fractures in the supply chain or other factors, pricing adjustments may be issued on a quote-by-quote basis by the Contractor for a specified period of time as designated in a contract amendment. These amendments are not subject to the price adjustment limitations in B4.12. During this limited period of time, the contract's current price sheet shall be used as "baseline pricing". The quotes shall be structured with "baseline pricing" plus or minus actual Contractor price impacts due to the current market conditions. All quotes provided shall be effective for a minimum of 30 days. Once the quote pricing period expires, pricing shall revert to the contract's current "baseline pricing".

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.14 Price List – All "catalog" pricing must be published and available at all times via website access, and/or electronic/printed price pages. When price sheets are updated, the successful Contractor will provide the Lead State Contract Administrator and Issuing Officer an electronic price list in Excel or Excel compatible in ".xls" format that includes

both the published list prices, the discount used to compute the final cost, and the final NASPO ValuePoint cost.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	
Bidder must describe how they comply with the above requirement(s):	

B4.15 Allowable Charges Freight/Shipping/Set-up Fees -. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile, or the dealer is allowed to set the rate. Delivery is to be FOB Destination (of Purchasing Entity) freight collect. Any Freight, shipping and handling costs and set-up fees paid by the Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered. Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.16 Allied Equipment

Allied Equipment may only be sold in connection with the sale of a contract item. Allied Equipment must be clearly labeled on the purchase order or quote as Allied Equipment. "Allied Equipment" means an incidental item, attachment, accessory, part, or a specific bundle of the foregoing that is not manufactured by the contract Supplier but has been requested by a Purchasing Entity to complete the purchase of equipment awarded on Contract. Allied Equipment may modify, the contract item with which it is being sold, but it may not substantially convert the contract item to such an extent that it would be substantially similar in purpose to, and compete with a contract item awarded to another Supplier.

a) Awarded Vendor(s) may offer Allied Equipment that compliment or enhance the Products and/or Services offered under the resulting Master Agreement(s). Allied Equipment will include:

i) Accessories

ii) Components

iii) Upgraded parts

b) Allied Equipment may only be acquired through the Awarded Vendor(s) or their Authorized Dealer(s) and must be reported quarterly with all other sales under the resulting Master Agreement(s).

c) Allied Equipment must be priced at a minimum discount of 15% from MSRP or List Price.

d) Allied Equipment shall not be offered to a Purchasing Entity as a stand-alone option, and the maximum allowable amount of all Allied Equipment in a single Order shall be determined by the Participating State or Entity.

e) It shall be at the discretion of the Participating State or Entity to allow Allied Equipment in their Participating Addendum.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.17 New Products - All proposed equipment/products shall be delivered as new and fully operational to the Purchasing Entity's location. Exceptions must be clearly disclosed in the "Notes" section of **Attachment C Pricing.**

New Products may be added to the contract when pricing updates per section B 4.12 Pricing Adjustments are requested. The discount cannot be lowered throughout the Contract period.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.18 Discontinued Products - Suppliers are to notify the Contract Administrator of any changes in their schedule of equipment such as discontinued products or replacement models. The updating of new and discontinued products shall be completed when pricing adjustments are initiated per section

☐	I have reviewed the above requirement and agree with no exception.

☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

B4.19 Liquidated Damages - Late or improper completion of the Contract Activities will cause loss and damage to the Participating Entity and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, if there is late or improper completion of the Contract Activities the Participating Entity is entitled to collect liquidated damages in the amount of $5,000 and an additional $100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the Participating Entity, and it would be impracticable and extremely difficult to fix the actual damage sustained by the Participating Entity. Therefore, the Participating Entity may assess liquidated damages against Contractor as specified below.

- The Participating Entity is entitled to collect $1,000 per individual per day for the removal of any Key Personnel without prior approval of the Participating Entity.
- The Participating Entity is entitled to collect $1,000 per individual per day for an unapproved or untrained key personnel replacement.

B4.20 Service-Level Agreements (SLAs)

A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this Contract.

B. The Lead State reserves the right to reconsider or amend SLA amounts for split awards should they occur.

C. Please Note: Should Bidders require clarification or have any questions with regard to the SLAs, they should submit them during the *Question and Answer Period* of this solicitation; please see the **Proposal Instructions** for the timeline.

Service Level Agreements for this Contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose	• Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Delivery shall not exceed the agreed upon delivery date by more than 14 calendar days. • Equipment purchases requiring installation services: Once the Contractor has secured parts for installation, a mutually agreed upon delivery date shall be established with the Purchasing Entity. Delivery shall not exceed the agreed upon delivery date by more than 7 calendar days.
Acceptable Standard	1. All deliveries must occur in accordance with the Purchasing Entity's receiving hours. 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager prior to the scheduled delivery date and time. 3. Items, brands, and quantities delivered will match the Order Confirmation exactly. 4. Signed and dated packing slips will be provided to Purchasing Entity at the time of delivery. 5. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager. 6. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate. The acceptable standard is 100% compliance.
Credit Due for Failing to Meet the Service Level Agreements	1. 5% of the purchased price may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. 10% of the purchase price may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. Extenuating circumstances will be reviewed by the Program Manager before any Service Credits are assessed. At the discretion of the Participating Entity, these credits may be applied toward any amount payable due to the Contractor or be payable directly to the State. Payments made directly to the state will be completed within 10 days of notice of assessment.

☐	I have reviewed the above requirement and agree with no exception.
☐	I have reviewed the above requirement and have noted all exception(s) below.
List all exception(s):	

ATTACHMENT C - PRICING

DEFINITIONS:
Good: bidders' smallest most basic model with no options (unless option is needed to meet the "Equipment Item" requirement).
Better: bidders' average, but not smallest, most basic model with no options (unless option is needed to meet the "Equipment Item" requirement).
Best: bidders' largest, most capable model with no options (unless option is needed to meet the "Equipment Item" requirement).
Equipment: includes the component(s) the bidder provides to install on chassis (provided by others).
Equipped Truck (Turn-key): includes the component(s) and chassis provided by the bidder as a fully functional operating unit for the task(s) it is intended to achieve.
Body: Relates to any item being purchased such as a dump box, plow, running boards, trailer, etc.

Evaluation of Cost Proposals: Specifications shall be reviewed and compared amongst bidders for the quality of the products offered. This would include the materials used, the quantity and quality of base items and options, and any additional features that demonstrate a superior product.
Besides Good/Better/Best equipment pricing, the bidders price sheet shall be evaluated. The bidder must demonstrate consistent overall value for all equipment pieces including the cost of parts, options, and attachments. In addition, options shall be evaluated for their overall selection.

The following items must be submitted with your bid for each product. Failure to do so may result in rejection of bid.
SUBMITTED WITH PRICING:
1) Complete equipment specifications
2) A description of product standard items and included option(s) specific to the product bid as "Good/Better/Best".
3) A list of available options and attachment(s) for each item bid, with line item pricing.
4) If applicable, the bidder shall submit their discounted catalog pricing pages for rentals and parts. Hourly labor rates for maintenance and repair service shall also be provided.

PRICING SUBMITTAL:
Provide pricing and specifications for "Good, Better, and Best" equipment listed below. If bidder has only one model that meets the requested listed item, that single model would be considered the bidders' submission for each "Good, Better, Best" price.

ADMINISTRATIVE FEES: Please refer to **Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions section 6**, and **Attachment F section 6.**

AERIAL EQUIPMENT				PRICING												
				Equipment Cost				Installation		Delivery Cost						Description
CATEGORY	EQUIPMENT ITEM	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Boom Cranes	Boom crane - insulated mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Bucket Equipment	Aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Digger Derricks	Digger derrick insulated, with 48" Auger mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Knuckle Booms	Knuckle Boom - insulated mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
Truck Mounted Hydraulic Platforms	Aerial platform - Scissor lift mounted to Truck	Shortest reach available	GOOD	NA											
		Median reach available	BETTER	NA											
		Longest reach available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

AERIAL TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK (REGULAR CAB)	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Boom Cranes	Turn-key **FORD** Truck with mounted boom crane - insulated	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted boom crane - insulated	Median reach available			BETTER												
		Longest reach available			BEST												
Bucket Equipment	Turn-key **FORD** Truck with aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to chassis.	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with aerial tower with Man-lift - insulated, telescopic, non-over center, 2 man bucket mounted to chassis.	Median reach available			BETTER												
	Turn-key **FREIGHTLINER** Truck with aerial tower with Man-lift - insulated, telescopic articulating, over center, 2 man bucket mounted to chassis.	Longest reach available			BEST												
Digger Derricks	Turn-key **FORD** Truck with mounted digger derrick insulated, with 48" Auger	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted digger derrick insulated, with 48" Auger	Median reach available			BETTER												
		Longest reach available			BEST												
Knuckle Booms	Turn-key **FORD** Truck with mounted Knuckle Boom - insulated	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Knuckle Boom - insulated	Median reach available			BETTER												
		Longest reach available			BEST												
Truck Mounted Hydraulic Platforms	Turn-key **FORD** Truck with mounted aerial platform - Scissor lift.	Shortest reach available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted aerial platform - Scissor lift.	Median reach available			BETTER												
		Longest reach available			BEST												

REFUSE EQUIPMENT				PRICING											
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Bodies - Refuse/Recycling	Container side, back, or Front loader mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Refuse/Recycling	Multi purpose refuse/recycling loader-hopper body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Refuse & Recycling Equipment	Refuse and Recycling body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Refuse truck Gripper System	Gripper System mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											

		Largest available	BEST	NA											
Refuse Truck Lift System	Truck Lift System mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

REFUSE TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Trucks - Refuse Collection	Turn-Key Truck with refuse body (Rear Loader)	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Refuse Collection	Turn-Key Truck with refuse & recycling body (Side Loader)	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												

ROADWAY EQUIPMENT				PRICING											
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Asphalt bodies	Asphalt Distributor mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt bodies	Live bottom body mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt bodies	Flusher/sprinkler body mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Hot Box Equipment	Asphalt recycler & hot box mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Patching Equipment	Pothole patcher mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Patching Equipment	Roll-off pothole patcher mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Asphalt Sealing Equipment	Asphalt sealer mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Dump and Service	5 yard Dump Body mounted to Truck	Steel dump body	GOOD	NA											
		Aluminum dump body	BETTER	NA											
		Stainless steel dump body	BEST	NA											
Bodies - Road ditch maintenance	Road ditch maintenance auger system mounted to dump truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Bodies - Van	Steel van service body	Shortest body available	GOOD	NA											
	Steel or aluminum van service body	Median body available	BETTER	NA											
	Aluminum van service body	Longest body available	BEST	NA											
Roll-off Cable Hoists	Roll-off cable hoist system mounted to truck	Shortest body available	GOOD	NA											
		Median body available	BETTER	NA											
		Longest body available	BEST	NA											
Hydro Excavating Equipment	Hydro excavator mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Liquid Management Solutions	Critical Spot Sprayer mounted to Truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Lube Skids	Lube Skid mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Mechanics Equipment	Mechanic body with crane mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Street Sweepers	Sweeper body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

ROADWAY TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Trucks - Bodies	Turn-key **FORD** Truck with mounted 5 yard Dump Body	Steel dump body			GOOD												
	Turn-key **FORD** Truck with mounted 5 yard Dump Body	Aluminum dump body			BETTER												
	Turn-key **FREIGHTLINER** Truck with mounted 10 yard Dump Body	Stainless steel dump body			BEST												
Trucks - Roll-off Cable Hoists	Turn-key **FORD** Truck with roll-off cable hoist system mounted to truck	Shortest body available			GOOD												
	Turn-key **FREIGHTLINER** Truck with roll-off cable hoist system mounted to truck	Median body available			BETTER												
	Turn-key **FREIGHTLINER** Truck with roll-off cable hoist system mounted to truck	Longest body available			BEST												
Trucks - Catch Basin Cleaner	Turn-key **FREIGHTLINER** Truck with Catch Basin Cleaner	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Grease Disposal	Turn-key **FORD** Truck with mounted Tank and Vacuum Pump	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Tank and Vacuum Pump	Median size available			BETTER												
	Turn-key **FREIGHTLINER** Truck with mounted Tank and Vacuum Pump	Largest available			BEST												
Trucks - Hydraulic Hoist Tanks	Turn-key **FREIGHTLINER** Truck with mounted Tank equipped with Hydraulic Hoist	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												
Trucks - Hydro Excavator	Turn-key **FREIGHTLINER** Truck with mounted Hydro Excavation body	Smallest available			GOOD												
		Median size available			BETTER												
		Largest available			BEST												

Trucks - Loading	Turn-key **FORD** Truck with Loading/Grapple Equipment	Smallest available			**GOOD**												
	Turn-key **FREIGHTLINER** Truck with Loading/Grapple Equipment	Median size available			**BETTER**												
	Turn-key **FREIGHTLINER** Truck with Loading/Grapple Equipment	Largest available			**BEST**												
Trucks - Lube	Turn-key single axle **FORD** truck with Lube Body	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key single axle **FORD** truck with Lube Body	Best quality as specified.			**BETTER**												
	Turn-key double axle **FREIGHTLINER** truck with fuel tank and Lube Body	Best available as specified			**BEST**												
Trucks - Mechanics	Turn-key single axle **FORD** truck with Mechanic body including crane	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key single axle **FORD** truck with Mechanic body including crane	Best quality as specified.			**BETTER**												
	Turn-key double axle **FREIGHTLINER** truck with Mechanic body including hydraulic crane and hydraulic outriggers	Best available as specified			**BEST**												
Trucks - Road ditch maintenance	Turn-key **FORD** single axle dump truck with road ditch maintenance auger system	Good quality but budget driven. Smallest available, as specified			**GOOD**												
	Turn-key single axle **FREIGHTLINER** dump truck with road ditch maintenance auger system	Best quality, Median size available, as specified.			**BETTER**												
	Turn-key single axle **FREIGHTLINER** dump truck with road ditch maintenance auger system	Best and largest available as specified			**BEST**												
Trucks - Sweeper	Turn-key **FREIGHTLINER** Truck sweeper	Smallest available			**GOOD**												
		Median size available			**BETTER**												
		Largest available			**BEST**												
Trucks - Sweepers - Compact Outdoor	Turn-key compact vacuum sweeper - Closed cabin, lightweight sweeper for sidewalks and curbs	Smallest available			**GOOD**												
		Median size available			**BETTER**												
		Largest available			**BEST**												

SNOW & ICE EQUIPMENT				**PRICING**											
				Equipment Cost				**Installation**		**Delivery Cost**					**Description**
CATEGORY	**EQUIPMENT**	**EQUIPMENT DETAILS**	**Equipment SPEC**	**Chassis**	**Body/part MSRP**	**% Discount**	**Discounted Cost**	**Cost**	**Hourly Rate**	**Point of Origin**	**Cost per mile**	**TOTAL COST**	**Warranty Duration**	**Warranty Notes**	**NOTES**
Airport Equipment	Snow plow mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Airport Equipment	Sweeper Broom mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Airport Equipment	Liquid system mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Pre-Wet Systems	Liquid de-icing system in dump body	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow & Ice Control Equipment	9', straight blade snow plow mounted to front of pickup truck	as specified	**GOOD**	**NA**											
	10', straight blade snow plow mounted to front of pickup truck with removable mounts	as specified	**BETTER**	**NA**											
	10', V-blade snow plow mounted to front of pickup truck with removable mounts	as specified	**BEST**	**NA**											
Snow & Ice Control Equipment (Municipal)	Liquid system mounted to truck	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow Blowers	Snow blower - Loader Mounted	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Snow Removal Equipment	12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Good quality but budget driven. As specified.	**GOOD**	**NA**											
	12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Best quality as specified.	**BETTER**	**NA**											
	12' straight front plow with right hand discharge, left & right 9' side-wings and underbody blade, plus 10 yard dump body with slide in salt/sand spreader mounted to double axle truck.	Best available	**BEST**	**NA**											
Specialty Vehicles	Towable Snowplow 12' single directional	as specified	**GOOD**	**NA**											
	Towable Snowplow 12' bi-directional	as specified	**BETTER**	**NA**											
	Towable Snowplow 12' bi-directional with salt delivery system	as specified	**BEST**	**NA**											
Spreaders - Deicing	Salt/Sand spreader mounted to pickup truck with 8' bed	Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											
Spreaders - Deicing	Slide-in salt/sand spreader for 3 yard municipal dump body	as specified	**GOOD**	**NA**											
	Slide-in salt/sand spreader for 5 yard municipal dump body	as specified	**BETTER**	**NA**											
	Slide-in salt/sand spreader for 10 yard municipal dump body	as specified	**BEST**	**NA**											
OTHER		Smallest available	**GOOD**	**NA**											
		Median size available	**BETTER**	**NA**											
		Largest available	**BEST**	**NA**											

SNOW & ICE TURN-KEY TRUCKS						**PRICING**										
						Equipment Cost				**Installation**		**Delivery Cost**				**Description**
CATEGORY	**EQUIPPED TRUCK**	**EQUIPMENT DETAILS**	**CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT**	**CHASSIS GVWR, WHEELBASE & CAB TO AXLE**	**Equipment SPEC**	**Chassis**	**Body/part MSRP**	**% Discount**	**Discounted Cost**	**Cost**	**Hourly Rate**	**Point of Origin**	**Cost per mile**	**TOTAL COST**	**Warranty Duration**	**Warranty Notes**	**NOTES**
Trucks - - Municipal Snowplow/deicing	Turn-key **FREIGHTLINER** Truck with 12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Good quality but budget driven. As specified.			**GOOD**												
	Turn-key **WESTERN STAR** Truck with 12' straight front plow with right hand discharge, 7' side-wing plow and underbody blade, plus 5 yard dump body with slide in salt/sand spreader mounted to single axle truck.	Best quality as specified.			**BETTER**												
	Turn-key **WESTERN STAR** Truck with 12' straight front plow with right hand discharge, left & right 9' side-wings and underbody blade, plus 10 yard dump body with slide in salt/sand spreader mounted to double axle truck.	Best available as specified			**BEST**												
Trucks - Airport Equipment	Turn-key truck with liquid de-icing system	Smallest available			**GOOD**												
		In-between size available			**BETTER**												
		Largest available			**BEST**												

Trucks - Airport Equipment	Turn-key truck with front and side wing snow plow and liquid deicing system	Smallest available			GOOD												
		In-between size available			BETTER												
		Largest available			BEST												
Trucks - Airport Equipment	Turn-key truck with sweeper Broom	Smallest available			GOOD												
		In-between size available			BETTER												
		Largest available			BEST												

VACUUM/SEWER EQUIPMENT				PRICING											
				Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPMENT	EQUIPMENT DETAILS	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Industrial Vacuum	Vacuum Tank with flushing equipment mounted on truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Sewer	Sewer cleaner body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Vacuum	Catch basin cleaner mounted to trunk	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Vacuum Excavator	Vacuum excavator body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
Water Recycling	Water recycling body mounted to truck	Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											
OTHER		Smallest available	GOOD	NA											
		Median size available	BETTER	NA											
		Largest available	BEST	NA											

VACUUM/SEWER TURN-KEY TRUCKS						PRICING											
						Equipment Cost				Installation		Delivery Cost					Description
CATEGORY	EQUIPPED TRUCK	EQUIPMENT DETAILS	CHASSIS CLASSIFICATION MAKE & MODEL OR EQUIVALENT	CHASSIS GVWR, WHEELBASE & CAB TO AXLE	Equipment SPEC	Chassis	Body/part MSRP	% Discount	Discounted Cost	Cost	Hourly Rate	Point of Origin	Cost per mile	TOTAL COST	Warranty Duration	Warranty Notes	NOTES
Trucks - Industrial Vacuum	Turn-key **FORD** Truck with mounted Vacuum Tank and Flushing Equipment	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with mounted Vacuum Tank and Flushing Equipment	Median size available			BETTER												
		Largest available			BEST												
Trucks - Sewer	Turn-key **FORD** Truck with sewer cleaner	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck with sewer cleaner	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum	Turn-key **FORD** vacuum catch basin cleaner truck	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** vacuum catch basin cleaner truck	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum - Litter Vehicles	Turn-key **FORD** truck vacuum debris collector	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** truck vacuum debris collector	Median size available			BETTER												
		Largest available			BEST												
Trucks - Vacuum Excavator	Turn-key **FORD** Truck vacuum excavator	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck vacuum excavator	Median size available			BETTER												
		Largest available			BEST												
Trucks - Water Recycling	Turn-key **FORD** Truck water recycling	Smallest available			GOOD												
	Turn-key **FREIGHTLINER** Truck water recycling	Median size available			BETTER												
		Largest available			BEST												

Attachment D - RFP Evaluation Scoresheet

TRUCK BODIES, SEASONAL MAINTENANCE EQUIPMENT, & UPFITTING SERVICES #210000000535 The State of Michigan, Department of Technology, Management and Budget, Central Purchasing Division (Lead State)

Firm Name: _____

Evaluator: _____

Date: _____

Score will be assigned as follows:

0 = Failure, no response
1 = Poor, inadequate, fails to meet requirement
2 = Fair, only partially responsive
3 = Average, meets minimum requirement
4 = Above average, exceeds minimum requirement
5 = Superior

		Score (0-5)	Weight	Points
1. Demonstrated Ability to Meet Statement of Work: *Attachment B - Section B1. Scope & Function* ***(If applicable, section B2. and B3. shall be scored separately****)*	40 points possible		X8	
2. Demonstrated Technical Capabilities: Attachment B - Section B4. General *Vendor Questions Worksheet Section 1, 2, 5, 5.1, 7, and 11*	15 points possible		X3	
3. Agreement with Standard Contract Terms: *Vendor Questions Worksheet Section 9*	15 points possible		X3	
4. Qualification and Expertise of Staff: *Vendor Questions Worksheet Section 3, 4*	15 points possible		X3	
5. References: *Vendor Questions Worksheet Section 8*	15 points possible		X3	
TOTAL EVALUATION POINTS	**(100 points possible)**		**Total**	

Attachment E - Distributor (Dealer) Agreement

(Example of an Approved Distributor Agreement)

APPROVED DISTRIBUTOR (DEALER) AGREEMENT – [Name of State]
FOR Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services – RFP 210000000535

NASPO ValuePoint Contract Number: _____

The State of_____(**State**) has entered into a contract with _____(**Manufacturer**) to provide Truck Bodies, Seasonal Maintenance Equipment, & Upfitting Services to the State and political subdivisions within the State resulting from State of Michigan Request for Proposal 210000000535 (**Contract)**.

Specific independent approved distributors will be authorized by **Manufacturer** to provide Truck Bodies, Seasonal Maintenance Equipment, and related services required for purchasing Truck Bodies, Seasonal Maintenance Equipment (equipment installation). ("Distributor(s)" herein includes **Manufacturer's** approved distributors).

This Distributor Agreement will identify the services to be provided by Dealer, as they may be used to satisfy Manufacturer's obligations under the terms of the Contract. Dealers will need to sign the Approved Distributor Agreement before the Dealer will be authorized to provide services to the State. This Agreement will be effective on the last signature date below.

The authorized Dealer agrees to the following:

1. **PROFESSIONAL SERVICES**
   Dealer agrees to provide the following services on behalf of Manufacturer in furtherance of Manufacturer's obligations under the terms of the Contract:

   [Insert List of Services to be Provided by Dealer]

   Dealer warrants that all services shall be performed in a professional and workmanlike manner consistent with standard industry practice; and in accordance with any approved Statement of Work under the Contract, if applicable. Dealer agrees to abide by all applicable laws, regulations, and industry standards when performing services for the State in furtherance of the Contract.

2. **INSURANCE REQUIREMENTS**
   The Dealer will agree to carry all insurance which may be required by federal and state laws, state and city ordinances, charters, regulations, and codes. The Dealer certifies that it has now and will continue to have in full force and effect the following certificates of insurance. Copies of the insurance certificates shall be provided to the State within ten (10) days upon request. All Insurance shall be issued by an insurance company authorized by the Insurance Department to transact business in the State. No policy shall expire, be canceled or materially changed to effect coverage available to the State without thirty (30) days written notice to the State.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of [Insert name of Participating State/Entity], its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

3. **INDEMNIFICATION/HOLD HARMLESS**
   The Dealer shall release, protect, indemnify and hold the State and its officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims arising from acts or omissions of the Dealer, its employees or subcontractors or volunteers.

4. **MANUFACTURER ACKNOWLEDGMENT**

   Manufacturer acknowledges and agrees that: (1) Dealer is a subcontractor, as it relates to any services that Dealer provides to State to satisfy an obligation of Manufacturer under the terms of the Contract; (2) Dealer is an approved distributer of Manufacturer; and (3) that Dealer will abide by and comply with the terms and conditions of the Contract.

IN WITNESS WHEREOF, by signing where indicated below, the authorized representative of the Dealer executes and agrees to the terms of this Distributor Agreement.

DEALER

[Signature of Dealer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

Manufacturer

[Signature of Manufacturer's Authorized Signer]_____

By: [Printer Name of Signer]

Its: [Title of Signer]

Date:

DEALER INFORMATION

Legal Status: Corporation † Partnership † Sole Proprietor

Dealer Name:_____

Address:_____

City, State, Zip:_____

Phone:_____ **Fax:_____**

Contact Name:_____

Email Address:_____

Federal Tax ID #:_____

Attachment F- Lead State Terms and Michigan Participating Addendum

These LEAD STATE TERMS AND CONDITIONS (or the State of Michigan's Participating Addendum) are agreed to between the State of Michigan (the "**State**") and [Insert Company Name] ("**Contractor**"), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on [Month, Day, Year] ("**Effective Date**"), and unless terminated, expires on [Month, Day, Year] *Note: (3 year base contract).*

This Contract may be renewed for up to two one-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Attachment B – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

   Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Attachment B**.

   Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

   Contractor must also be clearly identifiable while on State property by wearing

identification issued by the State, and clearly identify themselves whenever making contact with the State.

Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond if, in the opinion of the State, it will ensure performance of the Contract

2. Notices. All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

3. Contract Administrator. The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

State:	Contractor:
Yvon Dufour 525 W. Allegan, Constitution Hall, 1st Floor NE Lansing, MI 48933 dufoury@michigan.gov (517) 284-6996	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

4. Program Manager. The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
Scott Poyer Poyers@michigan.gov 517-719-6802	[Name] [Street Address] [City, State, Zip] [Email] [Phone]

5. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-

contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: $1,000,000 Each Occurrence $1,000,000 Personal & Advertising Injury $2,000,000 Products/Completed Operations $2,000,000 General Aggregate	Policy must be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: $1,000,000 Per Accident	Policy must: (1) be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease	
Garage keepers Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Garage Keepers Legal Liability coverage.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and

(c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

6. Administrative Fee and Reporting. Contractor must pay an administrative fee of **.5%** on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members~~,~~ (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: https://www.thepayplace.com/mi/dtmb/adminfee

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the Purchasing Entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

7. Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

8. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

9. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor. For the purposes of this Contract, any approved independent distributor (Dealer) of Contractor, having executed a Distributer/Dealer Agreement attached as **Attachment E** will be considered a subcontractor of Contractor, in accordance with the terms of this Section.

10. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

11. Background Checks. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in **Attachment B**, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

12. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

13. Change of Control. Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a

plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

14. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in **Attachment B**.

15. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Attachment B. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

16. Delivery. Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in **Attachment B**. All containers and packaging become the State's exclusive property upon acceptance.

17. Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by

Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

18. Warranty Period. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in **Attachment B**. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

19. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in **Attachment B**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

20. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in **Attachment B**.

21. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

22. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 23, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

23. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

24. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially

completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

25. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

26. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and

reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

27. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

28. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

29. State Data. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

30. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a

source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. **Obligation of Confidentiality**. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. **Cooperation to Prevent Disclosure of Confidential Information**. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party 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 Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. **Remedies for Breach of Obligation of Confidentiality**. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. **Surrender of Confidential Information upon Termination**. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should

Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

31. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

32. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material

breach of this Contract, which entitles the State to terminate this Contract under Section 22, Termination for Cause.

33. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

34. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

35. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

36. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

37. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

38. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

39. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused

by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

40. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

41. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

42. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

43. Entire Agreement and Order of Precedence.

These Lead State Terms and Conditions which are also referred to herein as the State of Michigan's Participating Addendum (including all amendments and attachments hereto) and the Master Agreement (including all amendments and attachments thereto) (collectively, the "**Contract**") constitute the entire agreement between the parties concerning the subject matter of this Contract and replaces any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. The terms and conditions of this Participating Addendum (including all amendments and attachments hereto) shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement as now or hereafter amended. This Contract may be modified only by a written document executed by the parties hereto.

NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS

CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

Any terms that may be contained in Attachment G or any other Purchasing Entity's or Participating State's Participating Addendum are expressly excluded from incorporation into this **Contract** and will have no legal effect on the contractual relationship between the Lead State of Michigan and Contractor. Further, the State of Michigan is not, and will not be, a party to any agreements or individual contracts entered into by and between Contractor and any other Purchasing Entity.

The following Attachment(s) and Exhibit(s) are hereby incorporated by reference and made part of these Lead State Terms and Conditions without difference:

Attachment B	**Statement of Work**
Attachment C	**Pricing**
Attachment E	**Distributer/Dealer Agreement**
Exhibit 1 to Attachment F	**Federal Provisions Addendum**
Exhibit 2 to Attachment F	**Byrd Anti-lobbying Certification**

44. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

45. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

46. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

47. Contract Modification. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

EXHIBIT 1 TO ATTACHMENT F
FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in 41 CFR Part 60-1.3, and except as otherwise may be provided under 41 CFR Part 60, then during performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

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

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

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the

administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contract** in excess of $2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of $2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which

prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

a. **Contractor**. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. **Subcontracts**. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. **Breach**. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of $100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable, and during performance of this Contract the Contractor agrees as follows:

a. **Overtime requirements**. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

c. **Withholding for unpaid wages and liquidated damages**. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

d. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of $150,000,** the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as

amended, 33 U.S.C. 1251 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

d. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **$100,000 or more** shall file the required certification in Exhibit 2 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal

contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under 2 CFR 200.322, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

a. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the contract performance schedule;

ii. Meeting contract performance requirements; or

iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

a. Access to Records. The following access to records requirements apply to this contract:

i. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions

ii. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed

iii. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

b. Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

c. DHS Seal Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

d. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

e. No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."

f. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

EXHIBIT 2 TO ATTACHMENT F
BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than $100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [enter contractor name here], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date