

RFP: S-10700-00001827 – TRAVEL MANAGEMENT SERVICES – AMENDMENT # 5

SECTION 1: PURPOSE

The purpose of this addendum is:

1.1 Clarify and Revise Attachment I

SECTION 2: ATTACHMENTS

The following Attachment, is revised and attached to this amendment, and updates the RFP via this Amendment #5:

Attachment I: Revised Cost Proposal

SECTION 3: PROTEST

Protests to this addendum must be submitted in the manner required in RFP Section 4.4.2, and are due July 28, 2022.

RFP: S-10700-00001827 – TRAVEL MANAGEMENT SERVICES – AMENDMENT # 4

SECTION 1: PURPOSE

The purpose of this addendum is:

1.1 MODIFICATION OF RFP SECTION 4.13, ROUND 2 PROCUREMENT PROCESS.

SECTION 2: MODIFICATIONS

- 2.1** Section 4.13, in its Subsection 4.13.2, Statewide Standards Spreadsheet (Scored), and Subsection 4.13.3, Cost Evaluation, are modified as follows. New language is indicated by **bold underlined** font, deleted language is indicated by ~~strikethrough~~ font; the entirety of Section 4.13 is included for convenience.

4.13.1 PRESENTATIONS / DEMONSTRATIONS

Proposers progressing to Round 2 will be invited to participate in Proposer presentation/demonstrations. Proposers will be notified in writing, either by hard copy or electronically. The notification will provide information about the specific time and location of the presentation/demonstrations. Presentation/demonstrations may be in person at a location determined by DAS; however, DAS may elect to conduct presentations/demonstrations via teleconference or video conference. Proposers will be provided an opportunity to provide clarification or further detail to their proposal submitted and respond to questions pertaining to the needs of the RFP. Further details will be included with Notice of Competitive Range.

4.13.2 Statewide Security Standards Spreadsheet ~~(Scored)~~

Solution Security is extremely important to DAS. Yet, Lead State recognizes that security requirements may be satisfied by more than one approach. In order to assist the evaluation of the Proposal, Proposer shall address the security requirements set forth in the *Statewide Security Standards Spreadsheet Attachment H* for the proposed Solution. This spreadsheet will be provided to Round 2 Proposers as an amendment to this RFP at the time Round 2 notifications are sent to the Proposer. Proposer shall complete the spreadsheet and insert comments. **Proposer shall submit the completed spreadsheet with its Round 2 materials.**

The responses will not be scored, but, if the Proposer solution does not meet the security requirements, DAS may reject the Proposal.

4.13.3 COST EVALUATION

The SPC will conduct the cost evaluation. The Cost Proposal is worth a total of 300 points. As noted on the Cost **Proposal Matrix** (Attachment I), the RFP requests amounts for six (6) different fees: (a) Full Service Agent Fee; (b) Online Transaction Fee; (c) After Hours Fee; (d) Hotel Only Booking Fee; (e) Car Rental Only Booking Fee; and (f) Hotel and Car Only Booking Fee. Proposal shall provide a fee for each as required. Each separate fee is worth a maximum of 50 points to equal a total of 300 points for the Cost Proposal.

Any submitted line- item fee of zero will receive the full cost points possible (50).

The SPC will award a cost score for each separate fee based upon the percentage of the proposed cost as compared to the lowest Proposer's cost using the following formula:

$$\frac{\text{Lowest greater than zero fee being scored}}{\text{fee being scored}} \times \text{cost points possible (i.e. 50)} = \text{cost Score}$$

The SPC will add together Proposer's cost points for each separate fee for a total cost.

4.13.4 Security Discussion (Not Scored)

At Proposer's discretion, Proposer may request a meeting with the SPC and the Office of the State Chief Information Officer's Cyber Security Section (CSS) to discuss the Statewide Information Security Standards spreadsheet.

If Proposer requests a meeting, Proposer shall collaborate with the SPC to schedule this discussion for an approximate 30-minute period of time prior to the time the submittal is due.

- 2.2 Section 4.13, is amended to change the reference to "Cost Matrix" under "Round 2 Points Possible" to "Cost Proposal."

SECTION 3: ATTACHMENTS

The following Attachments, each in the form attached to this amendment, are added to the RFP via this Amendment #4:

Attachment H: Security Spreadsheet

Attachment I: Cost Proposal

SECTION 4: PROTEST

Protests to this addendum must be submitted in the manner required in RFP Section 4.4.2, and are due July 14, 2022.

RFP: S-10700-00001827 – TRAVEL MANAGEMENT SERVICES – AMENDMENT # 3

SECTION 1: PURPOSE

The purpose of this addendum is:

1.1 MODIFICATION OF COVER PAGE, RFP Close Date and Time

1.2 MODIFICATION OF SECTION 1.2 SCHEDULE

SECTION 2: MODIFICATIONS

Section 2.3.2 Participating States is modified as follows. New language is indicated by **bold underlined** font, deleted language is indicated by ~~strikethrough~~ font.

2.1 MODIFICATION OF COVER PAGE

The State of Oregon Acting by and through its Department of Administrative Services, Procurement Services, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program

Is issuing this Request For Proposals (RFP) under OregonBuys Bid Number S-10700-00001827 for Travel Management Services

Date of Issue: January 25, 2022

Closing Date and Time: ~~March 7, 2022 at 10:30 AM~~ **March 14, 2022 at 10:30 AM**

Single Point of Contact (SPC): Kaliska King, OBPC, CPPB, Procurement Analyst

Address: 1225 Ferry St SE

City, State, Zip: Salem, Oregon 97301

Phone (voice): 503.798.1907

E-mail: Kaliska.king@das.oregon.gov

2.2 MODIFICATION OF SECTION 1.2 SCHEDULE

Event	Date	Time
Pre-Proposal Conference	February 3, 2022	11:00 AM
Questions / Requests for Clarification Due	February 9, 2022	11:00 AM
Answers to Questions / Requests for Clarification Issued (approx.)	As soon as available.	
RFP Protest Period Ends	February 4, 2022	
Closing (Proposal Due)	See RFP cover page	
Opening of Proposal	March 7, 2022 <u>March 14, 2022</u>	11:00 AM
Presentations or Demonstrations estimated	April or May 2022	
Issuance of Notice of Intent to Award (approx.)	June 2022	
Award Protest Period Ends	7 calendar days after Notice of Intent to Award	

SECTION 3: PROTEST

Protests to this addendum must be submitted in the same manner required in RFP section 4.4.2 and are due March 9, 2022.

RFP: S-10700-00001827 – TRAVEL MANAGEMENT SERVICES – AMENDMENT # 2

SECTION 1: PURPOSE

The purpose of this addendum is:

- 1.1 MODIFICATION OF RFP SECTION 2.3.2, Participating States;**
- 1.2 MODIFICATION OF RFP SECTION 4.13.5 PREFERENCES; and**
- 1.3 MODIFICATION OF RFP ATTACHMENT G, State Specific Terms and Conditions.**

SECTION 2: MODIFICATIONS

RFP Section 2.3.2, Participating States, is modified as follows. New language is indicated by **bold underlined** font, deleted language is indicated by ~~strike through~~ font.

2.1 MODIFICATION OF SECTION 2.3.2 Participating States

The State of Oregon is serving as the Lead State for this procurement and is conducting a permissive cooperative solicitation on its behalf and on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities under the Master Agreement attached hereto as Attachment A, which includes the NASPO ValuePoint Terms and Conditions.

Other entities may elect to participate in the Master Agreement resulting from this solicitation. Use of cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual states' statutes are subject to the approval of their respective state chief procurement officials. Issues of interpretation and eligibility for participation are solely within the authority of the respective state chief procurement official. Other entities electing to enter into an agreement with Contractor for Travel Management Contractor Services may negotiate their own specific terms and conditions through use of a Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the entity is located. A sample Participating Addendum is attached to this RFP as Attachment A, Exhibit B.

In addition to Oregon, the following states have requested to be named in this RFP as potential users of the resulting Master Agreement, as of the date of publication of this RFP: Alaska, Arizona, Connecticut, Hawaii, Montana, New Mexico, South Dakota, and Utah. Other entities may become Participating Entities after award of the Master Agreement. Neither NASPO ValuePoint nor any other Participating Entity guarantees to purchase any amount under the Master Service Price Agreement to be awarded. Estimated quantities, if any, are for informational purposes only and are not to be

construed as a guarantee to purchase any amount. State-specific terms and conditions that will govern a state's Participating Addendum will be in the applicable Participating Addendum. Attachment G includes state specific terms and conditions terms for Oregon, New Mexico, Montana, **Connecticut**, and Arizona for convenience. Other states' terms will be reflected in the applicable Participating Addendum after award. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. Each Participating State will negotiate these terms and conditions directly with Contractor

2.2 MODIFICATION of Section 4.13.5 PREFERENCES, is deleted and section is marked "Reserved") (reference to Oregon preference requirements moved to Oregon Specific Terms and Conditions in Attachment G).

4.13.5 PREFERENCES RESERVED.

4.13.5.1 Reciprocal Preference

~~For evaluation purposes per OAR 125-246-0310, DAS shall add a percent increase to each out of state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Proposer in the [Proposer's state](#).~~

4.13.5.2 Recycled Materials

~~Agency will give preference to Proposers offering products manufactured using Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price according to any applicable reciprocal preference.~~

4.13.5.3 Tiebreakers

~~Oregon Supplies: If DAS receives Proposals identical in price, fitness, availability and quality and chooses to award a Master Agreement, DAS shall award the Master Agreement in accordance with the procedures outlined in OAR 125-246-0300.~~

2.3 UPDATE OF ATTACHMENT G, STATE SPECIFIC TERMS AND CONDITIONS

Attachment G State Specific Terms and Conditions is hereby removed in its entirety and replaced with the attached Amendment 2 Attachment G State Specific Terms and Conditions.

SECTION 3: PROTEST

Protests to this addendum must be submitted in the same manner required in RFP section 4.4.2 and are due February 22, 2022.

SECTION 4: ATTACHMENTS

Attachment G: Amendment 2 State Specific Terms and Conditions

RFP: S-10700-00001827 – TRAVEL MANAGEMENT SERVICES – AMENDMENT # 1

SECTION 1: PURPOSE

The purpose of this addendum is:

1.1 MODIFICATION OF SECTION 2.3.2 Participating States

1.2 MODIFICATION OF ATTACHMENT G State Specific Terms and Conditions

SECTION 2: MODIFICATIONS

Section 2.3.2 Participating States is modified as follows. New language is indicated by **bold underlined** font, deleted language is indicated by ~~strikethrough~~ font.

2.1 CLARIFICATION OF SECTION 2.3.2 Participating States

The State of Oregon is serving as the Lead State for this procurement and is conducting a permissive cooperative solicitation on its behalf and on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities under the Master Agreement attached hereto as Attachment A, which includes the NASPO ValuePoint Terms and Conditions.

Other entities may elect to participate in the Master Agreement resulting from this solicitation. Use of cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual states' statutes are subject to the approval of their respective state chief procurement officials. Issues of interpretation and eligibility for participation are solely within the authority of the respective state chief procurement official. Other entities electing to enter into an agreement with Contractor for Travel Management Contractor Services may negotiate their own specific terms and conditions through use of a Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the entity is located. A sample Participating Addendum is attached to this RFP as Attachment A, Exhibit B.

In addition to Oregon, the following states have requested to be named in this RFP as potential users of the resulting Master Agreement, as of the date of publication of this RFP: ~~Alaska~~, Arizona, Hawaii, Montana, New Mexico, South Dakota, **and Utah**. Other entities may become Participating Entities after award of the Master Agreement. Neither NASPO ValuePoint nor any other Participating Entity guarantees to purchase any amount under the Master Service Price Agreement to be awarded. Estimated quantities, if any, are for informational purposes only and are not to be construed as a guarantee to purchase any amount. State-specific terms and conditions that will govern a state's Participating Addendum will be in the applicable Participating Addendum. Attachment G

includes state specific terms and conditions terms for Oregon, New Mexico, Montana, and Arizona for convenience. Other states' terms will be reflected in the applicable Participating Addendum after award. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. Each Participating State will negotiate these terms and conditions directly with Contractor

2.2 CLARIFICATION OF ATTACHMENT G STATE SPECIFIC TERMS AND CONDITIONS

Attachment G State Specific Terms and Conditions is hereby removed in its entirety and replaced with the following Revised Attachment G State Specific Terms and Conditions.

SECTION 3: PROTEST

Protests to this addendum must be submitted in the same manner required in RFP section 4.4.2 and are due February 4, 2022.

SECTION 4: ATTACHMENTS

Attachment G: State Specific Terms and Conditions

STATE OF OREGON



COVER PAGE

The State of Oregon Acting by and through its Department of Administrative Services, Procurement Services, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program

Is issuing this Request For Proposals (RFP) under OregonBuys Bid Number S-10700-00001827 for Travel Management Services

Date of Issue: January 25, 2022

Closing Date and Time: March 7, 2022 at 10:30 AM

Single Point of Contact (SPC): Kaliska King, OBPC, CPPB, Procurement Analyst

Address:	1225 Ferry St SE
City, State, Zip	Salem, Oregon 97301
Phone (voice)	503.798.1907
E-mail:	Kaliska.king@oregon.gov

The State of Oregon promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.

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LIST OF ATTACHMENTS

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SECTION 1: GENERAL INFORMATION

1.1 INTRODUCTION

The State of Oregon, acting by and through the Department of Administrative Services, Procurement Services, (“DAS”), is conducting this permissive cooperative procurement in collaboration with NASPO ValuePoint, and is issuing this Request for Proposals (“RFP”) to establish a Master Agreement with a qualified vendor to provide travel management services, including but not limited to agent assisted services, and internet-based booking tool and fulfillment services.

Additional details on the Scope of the services are in the Scope of Work section.

DAS anticipates the award of one Master Agreement from this RFP. The initial term of the Master Agreement is anticipated to be 2 years with options to renew up to a maximum of 6 years.

1.2 SCHEDULE

The table below represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

Event	Date	Time
Pre-Proposal Conference	February 3, 2022	11:00 AM
Questions / Requests for Clarification Due	February 9, 2022	11:00 AM
Answers to Questions / Requests for Clarification Issued (approx.)	As soon as available.	
RFP Protest Period Ends	February 4, 2022	
Closing (Proposal Due)	See RFP cover page	
Opening of Proposal	March 7, 2022	11:00 AM
Presentations or Demonstrations estimated	April or May 2022	
Issuance of Notice of Intent to Award (approx.)	June 2022	
Award Protest Period Ends	7 calendar days after Notice of Intent to Award	

1.3 SINGLE POINT OF CONTACT (SPC)

The SPC for this RFP is identified on the Cover Page, along with the SPC’s contact information. Proposer shall direct all communications related to any provision of the RFP only to the SPC, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision.

SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

2.1 AUTHORITY AND METHOD

DAS is issuing this RFP pursuant to its authority under ORS 279A.215 and OAR 125-246-0140, and OAR 125-246-0170(3)(I).

DAS is using the Competitive Sealed Proposal method, pursuant to ORS 279B.060 and OAR 125-247-0260. DAS may use a combination of the methods for Competitive Sealed Proposals, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; c) Revised Rounds of Negotiations; d) Negotiations; e) Best and Final Offers; and f) Multistep Sealed Proposals.

2.2 DEFINITION OF TERMS

For the purposes of this RFP, capitalized words are defined in OAR 125-246-0110 or as defined in this RFP, including its Sample Contract.

“Purchasing Entity Data” means any information received or created relating to a Purchasing Entity or its Travelers, including information created and information stored through the Services, and information created and collected by Contractor regarding Purchasing Entity and its Travelers during the course of providing the Services, including personally identifiable information.

“Authorized User(s)” includes individuals authorized to hold accounts for Services, such as NASPO ValuePoint representatives, and employees of Participating Entities and their Authorized Travelers.

Gross Sales means the total invoice value of sales before deducting discounts or making allowances for returns, or other adjustments.

“GSA Per-Diem” means the domestic federal General Services Administration (GSA) lodging per diem rate in effect at the location and on the date of the room occupancy as published on the Internet at www.gsa.gov/perdiem, as FTR Bulletins.

“Lead State” means the State centrally administering any resulting Master Agreement(s) who is the party the master agreement.

“Master Agreement” means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as not 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.

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

“Participating Entity” means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Request for Services against the Master Agreement and becomes financially committed to the purchase.

“Request for Services” means a method by which an Authorized User of a Purchasing Entity may order Services, whether in person, in writing, by phone or other electronic means used by a Purchasing Entity to order the Services.

“State Chief Procurement Official” means the primary individual designated and authorized by law or administrative rule to administer the authority of the state government for procurement of goods and services.

“Services” means the Travel Management Services to be provided by Contractor pursuant to a Request for Services as described in Attachment A, Exhibit B.

“Supporting Contract” refers to other travel related contracts established by Oregon or any other Participating Entity that Contractor or other travel management services providers may need to use in order to provide the Services. These contracts will be the first option(s) offered to Authorized Users, including acceptance of required forms of payment per each contracts terms and conditions.

“Traveler” means the person authorized (for official business) to receive Services under this Master Agreement.

2.3 OVERVIEW AND PURPOSE

2.3.1 NASPO ValuePoint Overview and Background

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 please see: www.naspovaluepoint.org and www.naspo.org.

The NASPO ValuePoint travel sourcing team, which consists of travel managers and procurement officials from six states, led by the State of Oregon, developed a nationwide lodging program in 2010 called WSCA Lodging. Subsequently, in 2012 the State of Oregon on behalf of NASPO ValuePoint and other purchasing entities executed a travel management services master price agreement (State of Oregon contract #2579) for a travel booking tool and fulfillment services to assist with managing travel bookings for lodging, rental car, and airline services. When price agreement #2579 expired in 2017, a solicitation was completed and the awarded State of Oregon price agreement #7540 replaced it. As part of the Travel Management Services, NASPO ValuePoint Lodging is a program. This program is managed and by the awarded contractor.

This program consists of approximately 10,000 individual hotels that honor at or below General Services Administration (GSA) Per-Diem rates for any state or political subdivision

employee in the United States. NASPO ValuePoint has two competitive discount rental car master price agreements (#9408 and #9409). The current travel management services provider master agreement expires on August 15, 2022.

2.3.2 Participating States

The State of Oregon is serving as the Lead State for this procurement and is conducting a permissive cooperative solicitation on its behalf and on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities under the Master Agreement attached hereto as Attachment A, which includes the NASPO ValuePoint Terms and Conditions.

Other entities may elect to participate in the Master Agreement resulting from this solicitation. Use of cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual states' statutes are subject to the approval of their respective state chief procurement officials. Issues of interpretation and eligibility for participation are solely within the authority of the respective state chief procurement official. Other entities electing to enter into an agreement with Contractor for Travel Management Contractor Services may negotiate their own specific terms and conditions through use of a Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the entity is located. A sample Participating Addendum is attached to this RFP as Attachment A, Exhibit B.

In addition to Oregon, the following states have requested to be named in this RFP as potential users of the resulting Master Agreement, as of the date of publication of this RFP: Alaska, Arizona, Hawaii, Montana, New Mexico, South Dakota,. Other entities may become Participating Entities after award of the Master Agreement. Neither NASPO ValuePoint nor any other Participating Entity guarantees to purchase any amount under the Master Service Price Agreement to be awarded. Estimated quantities, if any, are for informational purposes only and are not to be construed as a guarantee to purchase any amount. State-specific terms and conditions that will govern a state's Participating Addendum will be in the applicable Participating Addendum. **Attachment G** includes state specific terms and conditions terms for Oregon, New Mexico, Montana, and Arizona for convenience. Other states' terms will be reflected in the applicable Participating Addendum after award. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. Each Participating State will negotiate these terms and conditions directly with Contractor.

2.3.3 Overview and Purpose

DAS on its behalf and on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities seeks Proposals from Proposers who offer travel management services, including but not limited to agent assisted services, internet-based booking tool and related fulfillment services. The booking tool(s) must have the capability to display NASPO ValuePoint lodging program, vehicle rental, and air service agreements (properties and contractors) as preferred suppliers. The Participating Entity gives these contracts to the awarded contractor when the booking tool set up is done during implementation. They will be manually given to the awarded contractor by the Participating Entity.

The purpose of the RFP is to solicit proposals from travel management services providers that have the ability to provide domestic and international travel-related services (air, rail, car, hotel and other related travel management services) for public employees and other Authorized Users on official business within 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. Oregon is the Lead State for this RFP.

2.4 SCOPE OF WORK/SPECIFICATIONS

The successful Proposer will provide Travel Management Services to Authorized Users of Lead State and each Participating Entity that has executed a Participating Addendum with the successful Proposer. **Travel Management Services include at least:** Full reservation services for domestic and international travel, including ticketing and fulfillment of travel reservations for all commercial modes of travel, via an online booking tool and full service agent services. Travel Management Services include but will not be limited to:

2.4.1 Travel

- Airfare and rail reservations and booking.
- Lodging reservations.
- Ability to load manually, display, and manage Services featuring state and NASPO specific contracts in a booking tool.

2.4.2 Car rental reservations

- Booking.
- Ability to load manually State and NASPO Specific contracts in a booking tool.

2.4.3 Other

- Additional Travel Management Services not listed in the requirements the enhance the service.
- Additional related travel services, including booking charter bus services and Greyhound-type services.

SECTION 3: PROCUREMENT REQUIREMENTS

3.1 MINIMUM QUALIFICATIONS

To be considered for evaluation, a Proposal must demonstrate how Proposer meets all requirements of section 3:

3.1.1 Proposer shall provide evidence of accreditation and current certification from the Airlines Reporting Corporation (ARC) and the International Air Transportation Association (IATA) to represent, provide and sell the Services sought under this RFP.

3.1.2 Proposer shall have at least 5 years' experience providing services comparable to those sought under this RFP for large corporate or government clients with diverse geographic areas.

3.1.3 Proposer must provide three references. Instructions are provided in section 3.4.2 of this RFP and attached hereto as Attachment D.

3.1.4 Proposer must have held accounts with at least \$5,000,000 in annual corporate travel volume each year. To meet this requirement, include a report showing 2018 & 2019 volume.

3.1.5 Proposer must meet Section 3.4.9 Security Certification.

3.2 MINIMUM KEY PERSON REQUIREMENTS

Proposer must provide one or more Key Persons who have at least 5 years' experience within the last 7 years in the following:

- Corporate travel management business industry.
- Accounts with at least \$5,000,000 in annual corporate travel volume.

3.3 MINIMUM SUBMISSION REQUIREMENTS

3.3.1 ROUND 1 Proposal Submissions

To be considered for evaluation, a Proposal must contain each of the following elements (further detailed in Proposal Requirements section below):

- Technical Proposal
- Disclosure Exemption Affidavit (Attachment B) – submit 1 copy only
- Proposer Information and Certification Sheet (Attachment C)
- Reference Check Form (Attachment D)
- COBID Certification / Outreach Plan (Attachment E) - submit 1 copy only
- Responsibility Inquiry (Attachment F) - submit 1 copy only
- Key Persons and Resumes

3.3.2 Proposal Page Limits

A Proposal is limited to 50 pages. Any pages exceeding this limit will not be provided to the evaluation committee or considered in the evaluation. The following items do not count toward the page limit:

- Proposer Information and Certification Sheet (Attachment C)
- Reference Check forms (Attachment D)
- Reports listed in Sections 3.4.4.14 and 3.4.4.15

3.3.3 Proposal Format and Quantity

Proposal should follow the format and reference the sections listed in the Proposal Requirements section. Responses to each section and subsection should be labeled to indicate the item being addressed.

OregonBuys Electronic Response. Proposer should submit its Proposal electronically through OregonBuys. Proposer should follow the procedures outlined in *Section 4.5* for

electronic submission.

Proposer shall submit one copy of its Proposal and all other submittal requirements, with Attachment C - Proposer Information and Certification Sheet bearing the Proposer's authorized representative's Signature, in one of the following formats: Adobe Acrobat (pdf), Microsoft Word (docx), or Microsoft Excel (xlsx). If Proposer believes any of its Proposal is exempt from disclosure under Oregon Public Records Law (ORS 192.311 through 192.478), Proposer shall complete and submit the Disclosure Exemption Affidavit (Attachment B). Proposer shall also mark as "Confidential" in OregonBuys all attachments to its Proposal that Proposer believes are exempt from disclosure

The Proposer Information and Certification Sheet (Attachment C) must bear the Proposer's authorized representative's Signature.

3.3.4 Authorized Representative

Failure of the authorized representative to sign the Proposal may subject the Proposal to rejection by DAS.

3.4 ROUND 1 PROPOSAL REQUIREMENTS

A Proposal must address each of the items listed in this section and all other requirements set forth in this RFP. Proposer shall describe the Services to be performed. A Proposal that merely offers to provide the services as stated in this RFP may be considered non-Responsive to this RFP and not be considered further.

A Proposal should not include extensive artwork, unusual printing, or other materials not essential to the utility and clarity of the Proposal. Do not include marketing or advertising material in the Proposal, unless requested. A Proposal should be straightforward and address the information requested in this RFP. Proposals containing unsolicited marketing or advertising material may receive a lower evaluation score if specific, requested information is difficult to locate.

3.4.1 Proposer Information and Certification Sheet

Proposer shall complete and submit the Proposer Information and Certification Sheet (Attachment C).

Failure to demonstrate compliance with Oregon Tax Laws and sign the Proposer Information and Certification Sheet may result in a finding of non-Responsibility.

3.4.2 References

Proposer shall provide 3 references from current or former client firms for similar services performed for clients within the last 5 years. References must be able to verify the quality of previous, related services.

DAS may check to determine if references provided support Proposer's ability to comply with the requirements of this RFP. DAS may use references to obtain additional information, or verify any information needed. DAS may contact any reference (submitted or not) to verify Proposer's qualifications.

Proposer shall send the Reference Check Form (Attachment D) to its references. Reference forms must be completed by the reference, returned to the Proposer, and submitted with

the Proposal.

3.4.3 Technical Requirements

Proposer's Technical response must address each element of the Services. If Proposer intends to use a third party to deliver any of the Services (such as an affiliate, subcontractor, or partnership), the Proposal must specify which of the following is proposed to be provided by a third party.

3.4.3.1 Key Person(s) and Company History

Provide a resume for each proposed Key Person showing 5 years of experience in the last 7 years, corporate travel management business industry and the handling of accounts at least \$5,000,000 in annual corporate volume. Include a description of a clear understanding and relevant experience of managing this type of Service.

A brief company history, not to exceed 3 pages, that includes locations, number of employees, gross sales, and number of corporate/government accounts. For purposes of this Section, "gross sales" means that total invoice value of sales before deducting discounts or making allowances for returns, or other adjustments.

A description of Proposer's handling of accounts with at least \$5,000,000 in annual corporate travel volume each year, in 2018 and 2019.

3.4.3.2 Staffing

Describe Proposer's continuing education plan for staff, how they keep up to date with travel industry changes, trends, and an organizational chart indicating the proposed staffing configuration. The proposed staffing configuration must include the number of travel agents, based on estimated volume of travel, with a description of how Proposer will configure services for Participating Entities and Authorized User accounts.

3.4.4 Travel Management Services

3.4.4.1 General Management

Describe Proposer's general management approach, including specifically:

- The process for ensuring that only appropriate Authorized Users are given access to applicable Supporting Contracts, including the process for new entities to set up an account for services.
- Ensuring all Passenger Name Record (PNR) are evaluated for accuracy and completeness.
- Communicating all travel industry issues to each Participating Entity, Lead State, travel coordinators, and Travelers.
- Provide each Participating Entity with a dedicated Airlines Reporting Corporation (ARC) number, International Air Transport Association (IATA) number, and pseudo city code. The successful Proposer will be responsible for all associated fees. and shall maintain ARC and IATA information at no cost to Lead State or any Participating Entity for the term of the Master Agreement.

3.4.4.2 Online Booking Tool and Reservation Process

Describe the proposed booking tool(s) and Proposer's ability to provide multiple options

for industry-wide recognized online booking tools, allowing each Participating Entity to choose the booking tool, which provides the best value to them. Two tools that must be offered along with others are NuTravel and Concur booking tools.

The booking tool must at a minimum:

- Provide real time search and booking capabilities, available 24 hours a day, 7 days a week, with no additional charge to maintain, set up, or customize the booking tool and downtime within agreed upon service level agreements.
- Maintain Traveler profiles, with the capability of adding, maintaining user log in, changing or deleting profiles by users.
- Be accessible for viewing and booking on a smartphone or tablet, in addition to a workstation desktop.
- Provide on-line user support i.e. chat support, etc.
- Online booking tool access must be secure; at least password protected and contain a ticket and payment authorization system.
- Provide reservation confirmation screens.
- Permit the use of online changes to be made by the Authorized Purchaser (primary method) and the Global Distribution System (GDS) (secondary method).
- Provide capability of saving trips or cloning trip.
- List contracted lodging, air, car rental, and rail suppliers with in the online booking tool.
- Identify all state-contracted airfares and preferred travel vendors with an icon.
- Permit the use of the major Airlines Reporting Corporation (ARC) (legacy carriers) and non-ARC (low cost carriers [LCC]) participating carriers.
- Permit the use of online changes and exchanges (change-modify functionality) for non-ARC participating carriers.
- Include a secure payment authorization system that allows for multiple billing/payment options for a Participating Entity to have available for its Authorized Users to select from, which must include payment by personal credit card and/or a business travel account (BTA).
- Support a pre-trip approval process to obtain multiple levels of approval via an automated process, and capture information about travel arrangements at the time of booking, i.e. travel itinerary details and trip approvals.
- Track and display onscreen to a Participating Entity unused tickets for all airlines by Traveler name, and provide residual value to the Participating Entity or Traveler as part of the booking process.
- Support Participating Entity-specific policies identifying acceptable and non-acceptable travel rules.
- Identify and display state certified green hotels with customized icons and sort by priority within the lowest rate available,
- Ability to direct bookings to embedded or accommodated travel management services (single sign on capability).
- Provide full content and full functionality with non-ARC participating carriers
- Provide the capability to input and transmit a frequent flyer rewards program

number at the time of reservation.

- If requested, by the Participating Entity, be able to provide Travelers records to the Participating Entity for a minimum of 8 years from date of purchase or be able to accommodate a Participating States retention rules. As this information will be the information of record for the Participating Entity.

3.4.4.3 Agent Services

Describe the proposed agent services to be provided by professional travel agent(s), and related services to assist a Participating Entity in meeting its travel needs for various types of domestic and international business travel. Proposer must have a dedicated ARC number if applicable, International Air Transport Association (IATA) number, and pseudo code. Proposer is responsible for all associated fees and must maintain them at no cost to the Participating Entity for the entire term of the Master Agreement. Agent Services must include at a minimum:

- Processing and issuance of a credit on downgraded exchanged tickets to a Participating Entity originally billed for the ticket. When a Participating Entity applies for a credit, the successful Proposer will promptly process the necessary paperwork and the credit should be applied to the Business Travel Account (BTA).
- Ability to access state-contracted, discounted airfares and city pairs.
- Ability to book and integrate non-GDS/non-ARC carriers and the data within the booking process.
- Secure reservations via a GDS and automated monitoring of fares on a scheduled basis for the reissuing of tickets when the fare has decreased.
- Offering the lowest available rates and fares for all travel reservations.
- Verification of rates and fares for all tickets issued. In the event fares are reduced, the successful Proposer shall search out affected tickets and reissue them at the lower rates.
- Assistance with and reconciliation and resolution of any problems associated with reservations and tickets (includes air, rail, lodging, bus, motor coach services and car rentals).
- Ability to have access to a 24 hour seven day a week nationwide toll-free line must be available for emergencies.

3.4.4.4 On-site Agent Services

Describe the proposed process for providing on-site professional travel agent (s) including equipment, and software access to book travel and related services to assist a Participating Entity in meeting its travel needs for various types of domestic and international business travel. The services in Section 3.4.4.2.1 would be the same services the onsite agent would provide. Data available to on-site agents and any booking tool used must adhere to security standards listed in Attachment A, Sample Master Agreement and any Participating Addendum. On-site services may also require additional physical and public health safety laws, rules, and policies be followed by on-site Proposer representatives.

Other criteria for Proposer's Proposal for On-Site Agent Services are the reporting Services outlined in Section 3.4.4.3, and the ability to handle high volume of requests, individual

travel, group travel domestic and international and the ability to book all types of travel.

3.4.4.5 Scheduling and Booking:

Describe the proposed process for scheduling, booking, and ticketing air transportation, rail, rental car, motor coach, busses and hotel reservations, and other travel requirements as necessary, for individual and group Travelers traveling on behalf of a Participating Entity. Scheduling and booking may be done via phone or on-line.

Scheduling and Booking Services must include at a minimum:

- The ability to access state-contracted, discounted airfares and city pairs.
- A level of service that can respond to high volume booking during peak times and ensure quality standards of performance are consistently provided.
- Ability to access state-contracted, discounted airfares and city pairs.
- Ability to book and integrate non-GDS/non-ARC carriers and the data within the booking process.
- Secure reservations via a GDS and automated monitoring of fares on a scheduled basis for the reissuing of tickets when the fare has decreased.
- Offering the lowest available rates and fares for all travel reservations.
- Verification of rates and fares for all tickets issued. In the event fares are reduced, the successful Proposer shall search out affected tickets and reissue them at the lower rates.
- Assistance with, and reconciliation and resolution of, any problems associated with reservations and tickets (includes air, rail, lodging and car rentals). This could include ensuring Travelers know what documents are required to travel (passport, tourist cards, and other documentation for foreign or domestic travel).

3.4.4.6 Ticket Distribution

Describe the proposed process by which Proposer will accurately distribute customized e-ticket itineraries and receipts at time of ticketing or booking, and process paper documents when electronic tickets are not available. Ticket Distribution Services must include at a minimum:

- A quality control program to ensure reservations are correctly booked and documented, addressing at least: all necessary changes or adjustments in travel documents that may be required due to rescheduling on the part of a Participating Entity or on part of a Traveler prior to the trip or during the trip.
- Automated capability to complete pre-trip audits to ensure that the bookings/fares are adjusted to the lowest fare that meets the Traveler need.
- Provide each Traveler and the Participating Entity with a complete electronic trip itinerary.
- Comply with each Participating Entity-specific travel policies and trip approval requirements as specified by a Participating Entity or Authorized User.
- Documentation of Passenger Name Record (PNR) with exception documentation, reason codes, and low fare comparison.

3.4.4.7 Reservation(s) Process

Describe the proposed process for ensuring availability of all reservations through the Global Distribution System (GDS) and the online booking tool, including the ability to hold reservations according to the supplier rules and requirements.

3.4.4.8 Annual Lodging Refresh

Describe Proposer's solicitation process for recruiting and onboarding lodging providers, and management of its hotel directory. The solicitation process will integrate with the On-line Booking Tool and GDS Systems. This process includes using a system to send out room rate agreements and a central communication push to notify hotels of the opportunity. The annual refresh:

- Sending out instructions and assist hotels with loading their information into the booking tool and the GDS System
- Sending out communications to properties and maintain property directory that can be supplied to participants.
- Government rate must be offered, and lower rates should be further negotiated when possible. Where the Participating Entity has agreements with hotels/motels for discounted government rates or is able to obtain lower rates than offered by the Proposer, the Proposer shall obtain such rates or lower rates. For current lodging per diem rates, refer to <http://www.gsa.gov/portal/content/104877>
- Continuing to add hotel price agreements to negotiate state government rates and add to the hotel lodging program.
- Lodging reservations, which includes initiating and confirming reservations and confirming the rate at which the reservation is made. When a reservation is completely canceled, Proposer is responsible for canceling the accompanying lodging reservations unless requested not to do so.
- Include a plan to mitigate lodging provider's unique payment needs if the room is pre-paid by someone other than the traveler. For instance, the need for a third-party credit card authorization form or direct bill account.
- Offering hotel properties certified in green lodging. These hotels at the per diem rate in the traveler's preferred location, as the first option to be offered to the Traveler.

3.4.4.9 Additional Services Description and Additional Assurances

At a minimum include:

- Describe the process for notifying travelers of airport closings, flight status changes, weather delays, or any other travel related delays while the Traveler is in travel status, in a timely manner. Including communication for trips booked with the booking tool online and agent assisted.
- Describe duty of care and travel risk services, provided and the process for using them if needed.
- Describe the process for providing credits or refunds for travel services not utilized within seven (7) days of the cancellation or change.
- Describe the process for issuing a credit to the Business Travel Account (BTA)

on downgraded exchanged tickets to the Participating Entity originally billed for the ticket.

3.4.4.10 Website

Describe the process by which Proposer will for develop and maintain a user-friendly website where Authorized Users log in for government travel. The website must direct users to the appropriate travel sites (i.e. online booking tool, reporting tool), provide training, forms, FAQ's, travel news, updates and other helpful travel information. The Website approach and plan must include customized sub sites for the following entities at no additional charge:

- NASPO ValuePoint sub site.
- Entity and State Specific sub sites.
- Access the NASPO ValuePoint discounted travel agreements (air, rental car, lodging, etc.).
- These sub-sites must be configurable to meet the Participating Entity's Authorized User profiles.
- List NASPO ValuePoint Lodging Program properties and hotels first preference, and then the state's contracted hotels.

3.4.4.11 Customer Service

Describe the procedures and processes for customer service including hours of availability, speed of calls answered, hold time, how the customers identity is verified, and how adequate staffing is determined. Including at a minimum, Proposer's Service hours in each potential Participating Entity's local time zone during the hours of 8:00 AM to 5:00 PM Monday through Friday of the Participating Entities time zone with the ability to make routine travel reservations and online support during business hours above; excluding weekends and State observed holidays Live agent service outside of normal business hours.

3.4.4.12 Include afterhours contact information for Travelers or Participating Entities to contact the Proposer if needed, outside of business hours. After hours contacts must be able to assist the Traveler or Participating Entity with all the services listed above.

3.4.4.13 General Reporting and Other Reporting Areas. Describe the ability of the reporting system to produce all requested reports. Include a sample of the ten (10) most requested reports. Other reports Participating Entities may request are:

- Pre and post trip reporting;
- Fare savings/lost savings;
- Fraud alerts;
- Policy compliance reporting including exceptions reporting;
- Top travel/markets/vendors,
- Travel booking analysis including online vs. offline transactions,
- Crisis management reporting, and
- Class of service required by travel policies and regulations.

3.4.4.14 Accounting

Describe report(s) to show expense tracking, billing codes, vendors, volume, and travelers by state or by agency. These reports can be requested at any time by the Participating Entity, provide the 6 most common reports provided to Proposer's current customers. These reports should include:

- Billing summary broken down by month including credits and commissions;
- Credit card reconciliation including transaction detail;
- Summary and overview of account; and
- Due dates and administrative fee payments and usage reports .

3.4.4.15 Customized Reports

Describe or demonstrate the ability to customize reports at the request of a Participating Entity, provide the 4 most common reports provided to Proposer's current customers If requested by a Participating Entity, what is the time frame for the turnaround for customized reports?

3.4.4.16 Unused Tickets

Describe the proposed process for an automated process to identify, track and recover value from unused tickets, on-line or paper tickets, and vouchers, including communication to the Participating Entity. Describe How the Proposer would assist the Purchasing Entity in managing the unused tickets on a monthly basis and in an emergency situation, like COVID.

3.4.5 Additional Travel Related Services Available

Describe additional tools related to travel management services and technologies that Participating Entities may be interested in accessing. These services should add value to and enhance Authorized Users' travel management experience. Some of the required travel service level features would be:

- Ability to update the booking tool with properties not included in the Global Distribution Services (GDS)
- Statewide and nationwide travel agreements
- Risk management, and corporate liability planning
- Meeting and conference planning for small, medium and large groups.
- Automated user profile synch technology
- Automated travel planning and approval
- Automated airfare and hotel price tracking
- Automated expense reporting, invoice management and reimbursements. Explain what tools are available. Including if additional services agreements need to be signed with a third party tool.
- Mobile technology

3.4.6 Implementation /Onboarding

3.4.6.1.1 Transition

Describe the proposed process for coordinating the transitioning from the current contractor to Proposer. The process must ensure minimum disruption to Authorized Users and avoid decline or gap in Services, and specifically address working with the airlines if any fees associated with un-used tickets if a transition occurs and how existing traveler profiles are set up or transitioned or implemented.

3.4.6.2 Implementation

Describe the process by which Proposer will implement the Services with the Scope of Work for each Participating Entity. Include proposed timelines, key milestones, and key individuals in the process. Also, include any training Proposer's staff will have on its Services, and what training will be provided by Proposer to Participating Entities, including Travelers.

3.4.6.3 Disengagement

Describe the process and tools Proposer currently has to assist a Participating Entity in to transition from Proposer's Services to a subsequent solution.

3.4.7 Program Management

Describe Proposer's profile management process. The process must include at a minimum:

3.4.7.1 Profile Management

What is the process for the Authorized Users access to update profile information including preferences within the booking tool.

3.4.7.2 Data Management and Security

Describe the Proposer's process to create, publish, maintain and deploy a profile data security plan. The plan must include at a minimum:

3.4.7.2.1 Profile Data

Describe how profile data and protected information is secured and managed. How long data is stored on the Proposers servers and where the servers and back up servers are stored. What data levels of security are followed and what is the definition of each level?

3.4.7.2.2 System Management

Describe how the Proposers identify' s and repairs any security gaps that may expose Participating Entity data to risk of unauthorized access or use.

3.4.7.3 Data Confidentiality

Describe the security policies and processes in place that include Confidentiality of data including personal information. Including the process to investigate any data security related incident and provide notice to the Participating Entity and others, such as the Lead State and the individuals who data was involved, as deemed appropriate and to others as required by law or deemed appropriate by the Participating Entity.

3.4.7.4 Training

Describe training that is available at no additional charge to Participating Entities, the Lead State and NASPO ValuePoint, that includes:

- Online booking tool sessions;
- Webinars;
- Reporting;
- Online user support;
- Printable user guides/tutorials for travel administrators, travel coordinators, and Authorized Users;
- Presentations including preparation and planning.

3.4.7.5 Business Continuity and Disaster Recovery Plans

Describe the Proposer's disaster recovery and business continuity plans. Which must include timelines and the ability to continue services required in the Scope of work. Include the ability to continue services required in the Scope of Work. The plan must at a minimum address:

3.4.7.5.1 Server/Power Failure

Describe the processes and approaches used to ensure business continuity in the event of a power failure and / or server failure affecting Proposer's operations. Include the expected downtime until the backup goes in to affect.

3.4.7.5.2 Disaster Recovery Plans

Describe the Proposer's processes and procedures if the following type of emergencies were to occur: malware / ransomware attack, denial of service, nature events (storms, earthquake, floods, and tornadoes), pandemics or terrorism (911 and the airspace shutdown).

3.4.7.5.3 Communication

Describe the Proposer's method for notifying Participating Entities of a disaster or other service disruption. Include method for providing status updates and if an emergency such as COVID-19 or a similar disaster occurs?

3.4.7.5.4 Returning Funds during a Disaster incident

Describe the process and procedure the Proposer would take if the disaster required funds for airline ticket purchases or un-used tickets to be returned occurs?

3.4.7.6 Subcontracting

Describe of all services the Proposer intends to sub-contract. Including at a minimum:

- Describe the implementation services or third party products or services the sub-contractor may provide and of how implementation of services will work including the sub-contractor and how the services will be managed.

3.4.8 Program Outreach

Describe how Proposer intends to promote the use of the Master Agreement. Including what opportunities and/or challenges does the Proposer see in working with NASPO ValuePoint, steps to increase on-line booking usage and what goals the Proposer has to meet in the first year if awarded a contract.

3.4.9 Security Certification (Pass/Fail)

Proposal must contain a statement demonstrating Proposer's agreement that if awarded a Contract:

3.4.9.1.1 Proposer and Proposer's staff with access to Participating Entity and Purchasing Entity systems, facilities, data, and confidential information will submit to all security checks requested by Lead State, a Participating Entity, or a Purchasing Entity, which may include any combination of fingerprinting, state criminal background checks, and Federal Bureau of Investigation Criminal Justice Information Services ("FBI CJIS") background checks; and

3.4.9.1.2 Upon request, Proposer and Proposer's staff will sign a non-disclosure agreement for any and all data or information received or processed on its equipment related to the Services; and

3.4.9.1.3 Proposer will protect at all times sensitive material it receives relating to the Master Agreement, a Participating Addendum, or a Request for Services; and

3.4.9.1.4 Proposer and the electronic aspects of its Services will meet or exceed security standards as set forth in the following:

- NIST 800.53 (National Institute of Standards and Technology) at moderate level (or equivalent standard);
- PCI (Payment Card Industry) requirements;
- NACHA (National Automated Clearing House Association) Rules

SECTION 4: ROUND 1 SOLICITATION PROCESS

4.1 PUBLIC NOTICE

The RFP and attachments are published in the State of Oregon's electronic procurement system OregonBuys at <https://oregonbuys.gov/>. Documents will not be mailed to prospective Proposers.

Modifications, if any, to this RFP will be made by written Amendment(s) published in OregonBuys. Prospective Proposer is solely responsible for checking OregonBuys to determine whether or not any Amendment(s) have been issued. Amendment(s) are incorporated into the RFP by this reference.

4.2 PRE-PROPOSAL CONFERENCE

A Pre-Proposal conference will be held at the date and time listed in the Schedule. Prospective Proposers' participation in this conference is highly encouraged but not mandatory.

The purpose of the Pre-Proposal conference is to:

- Provide additional description of the desired Services;
- Explain the RFP process; and
- Answer any questions Proposers may have related to the desired Services or the process.

Statements made at the Pre-Proposal conference are not binding upon DAS. Proposers may be asked to submit questions in Writing.

Interested parties may participate in the Pre-Proposal Conference by:

Email the SPC on the cover of the RFP no later than close of business, 5:00 pm (Pacific Standard time) on February 2, 2022 for the link to the meeting.

4.3 QUESTIONS / REQUESTS FOR CLARIFICATIONS

All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must:

- Be delivered to the SPC via OregonBuys submission;
- Reference the RFP number;
- Identify Proposer's name and contact information;
- Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule in Section 1.2.

4.4 SOLICITATION PROTESTS

4.4.1 Protests to RFP

Prospective Proposer may submit a Written protest of anything contained in this RFP, including but not limited to, the RFP process, Specifications, Scope of Work, and the Sample Master Agreement. This is prospective Proposer's only opportunity to protest the provisions of the RFP, except that Proposer may protest Addenda as provided below.

4.4.2 Protests to Addenda

Prospective Proposer may submit a Written protest of anything contained in the respective Addendum. Protests to Addenda, if issued, must be submitted by 5 p.m. Pacific Time of the second Business Day or the date/time specified in the respective Addendum, or they will not be considered. Protests of matters not added or modified by the respective Addendum will not be considered.

4.4.3 All Protests must:

- Be delivered to the SPC via email;
- Reference the OregonBuys Bid number;
- Identify prospective Proposer's name and contact information;
- Be sent by an authorized representative;
- State the reason for the protest, including:

- the grounds that demonstrate how the Procurement Process is contrary to law, Unnecessarily Restrictive, legally flawed, or improperly specifies a brand name; and
- evidence or documentation that supports the grounds on which the protest is based
- State the proposed changes to the RFP provisions or other relief sought;
- Protests to the RFP must be received by the due date and time identified in the Schedule; and
- Protests to Addenda must be received by the due date identified in the respective Addendum.

4.5 PROPOSAL DELIVERY OPTIONS

Delivery through OregonBuys

Proposal submission should be electronically through OregonBuys at: OregonBuys.gov

Detailed instructions on how to submit a Proposal can be found at [OregonBuys Vendor Formal Solicitation Response.pdf](#)

4.6 PROPOSAL MODIFICATION OR WITHDRAWAL

If a Proposer wishes to make modifications to a submitted Proposal it must submit its modification in one of the authorized methods listed in the Proposal Delivery Options section. To be effective the notice must include the RFP number and be submitted to the SPC prior to Closing.

If a Proposer wishes to withdraw a submitted Proposal, it must submit a Written notice signed by an authorized representative of its intent to withdraw to the SPC via email, prior to closing in accordance with OAR 125-247-0440. To be effective the notice must include the RFP number.

4.7 PROPOSAL DUE

A Proposal (including all required submittal items) must be received by the SPC on or before Closing. All Proposal modifications or withdrawals must be received prior to Closing.

A Proposal received after Closing is considered LATE and will NOT be accepted for evaluation. A late Proposal will be returned to the Proposer or destroyed.

4.8 PUBLIC OPENING

A public Opening will be held on the date and time listed in the Schedule and at the location stated on the Cover Page. Only the name of the Proposer will be read at the Opening, no other information will be made available at that time. Proposals received will not be available for inspection until after the evaluation process has been completed and the notice of Intent to Award is issued pursuant to OAR 125-247-0630.

4.9 PROPOSAL REJECTION

DAS may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer's authorized representative sign the Proposal.
- Proposer has liquidated and delinquent debt owed to the State or any department or DAS of the State.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
- Proposer makes any contact regarding this RFP with State representatives such as State employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
- Proposer attempts to influence a member of the Evaluation Committee.
- Proposal is conditioned on DAS PS's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

4.10 ROUND 1 EVALUATION PROCESS

4.10.1 Responsiveness and Responsibility determination

4.10.1.1 Responsiveness determination

A Proposal received prior to Closing will be reviewed to determine if it is Responsive to all RFP requirements including compliance with Minimum Qualifications section and Minimum Submission Requirements section. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive proposal. If the SPC finds the Proposal non-Responsive, the Proposal may be rejected, however, DAS may waive mistakes in accordance with OAR 125-247-0470.

4.10.1.2 Responsibility determination

DAS will determine if an apparent successful Proposer is Responsible prior to award and execution of the Master Agreement. Selected Proposer(s) shall submit a signed Responsibility Inquiry form (Attachment G) within 5 Business Days of receipt of Intent to Award notice.

At any time prior to award, DAS may reject a Proposer found to be not Responsible.

4.10.2 Evaluation Criteria

Each Proposal meeting all Responsiveness requirements will be independently evaluated by members of an Evaluation Committee. Evaluation Committee members may change and DAS may have additional or fewer evaluators for optional rounds of competition. Evaluators will assign a score for each evaluation criterion listed below in this section up to the maximum points available in the Point and Score Calculation section.

SCORE	EXPLANATION
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10	OUTSTANDING - Response meets all the requirements and has demonstrated in a clear and concise manner a thorough knowledge and understanding of the subject matter and project. The Proposer provides insight into its expertise, knowledge, and understanding of the subject matter.
6 – 9	VERY GOOD – Response provides useful information, while showing experience and knowledge within the category. Response demonstrates above average knowledge and ability with no apparent deficiencies noted.
5	ADEQUATE – Response meets all requirements in an adequate manner. Response demonstrates an ability to comply with guidelines, parameters, and requirements with no additional information put forth by the Proposer.
1 – 4	FAIR – Proposer meets minimum requirements but does not demonstrate sufficient knowledge of the subject matter.
0	RESPONSE OF NO VALUE – An unacceptable response that does not meet the requirements set forth in the RFP. Proposer has not demonstrated knowledge of the subject matter.

SPC may request further clarification to assist the Evaluation Committee in gaining additional understanding of Proposal. A response to a clarification request must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.

4.10.2.1 Technical Requirements

4.10.2.1.1 Key Person(s) and Company Experience:

- How well does the Proposer describe all information regarding the qualifications and experience of Key Persons(s) to be specifically assigned to this engagement?
- How do the Proposed Key Person's describe the Proposer's understanding of the needs of the participating entities?
- How do the Proposed Key Person's demonstrate Proposer's commitment to the success of this program?
- How well does the description of the company history and experience meet the needs of the Participating States?
- How well does the Proposer's history indicate the company's ability to successfully manage a travel program for many states?
- How well does the Proposer outline its company's infrastructure including role descriptions, account size, and organizational charts for the proposed service and staff configuration?
- How well does the Proposer describe its staffing plan (including the number of travel agents) based on estimated volume of travel, describe how you would configure and service Participating Entity and Authorized User accounts?

4.10.2.2 Travel Management:

- How well did the Proposer describe the Authorized User access to preferred and discounted Supporting Contracts?
- How well did the Proposers communication about evaluating PNR's fit the Participating Entities needs?

4.10.2.2.1 Online Booking Tool and Reservation Process

- How well does the Proposer description of each booking tool's features and enhancements, fit the needs of the Participating Entities?
- How well did they varieties of booking tools offered fit the needs of the Participating Entities?

4.10.2.2.2 Booking Tool Requirements

- How well does the Proposer describe in detail its online booking tool options being offered, including direct-connect features and benefits with non-ARC participating carriers (including Southwest), any enhancements and authorizations, and security features?
- How well does the Proposer describe (using statistics) how reliable the booking tool is and provide an explanation of down time experienced in the last year?
- How well does the Proposer describe the system's capabilities to display the state's contracted airline "city-pair" and point of sale discount fares?
- How well does the Proposer explain the booking tool's ability to make changes on a pre and post ticketing basis, the various approval processes available and how unused tickets are tracked for all airlines?
- How well does the Proposer describe how the fulfillment is completed for on-line bookings (i.e., third party, DAS)?

4.10.2.2.3 Agent Services

How well does the Proposer describe the company's experience in booking various types of travel?

4.10.2.2.4 On-Site Agent Services

- How well does the Proposer describe the company's experience and ability to meet this area if requested by a Participating Entity?
- How well does the Proposer meet the need of high volume requests, reporting, group travel and individual travel requests?

4.10.2.2.5 Scheduling and Booking

- How well does the Proposer describe how the company's plans to provide the lowest available rates to Authorized Users?
- How well does the Proposer describe its ability to handle high volume peak periods, and what types of metrics are used to ensure quality standards of performance are consistently provided?

- How well does the Proposer describe the company's service offerings for all travel arrangements both domestic and international for State travelers, including air, lodging, rail reservations, ground transportation, rental car reservations and payment services?
- How well does the Proposer describe available resources, expertise, and experience to assure the services are delivered timely, accurately and successfully?
- How well did the Proposer describe its advice and applications provided to Authorized Users for passports, payment, tourist cards and other documents necessary for foreign travel?

4.10.2.2.6 Ticket Distribution

- How well does the Proposer's quality control Program meet the needs of the Participating Entity?
- How well does the Proposer's method for delivering electronic trip itinerary meet the needs of the Participating Entity?
- How well does the Proposer describe how it will encourage compliance with the end users respective travel policies?

4.10.2.2.7 Reservation(s):

How well did the Proposer describe the Global Distribution System (GDS) including the on-line booking tool being used to search for web fares, and how bookings are made with Airline carriers that have limited availability in the GDS?

4.10.2.2.8 Lodging

How well did the Proposer describe the company's process to recruit and onboard lodging Providers following the requirements in Section 3.4.4.3.1?

4.10.2.2.8.1 Annual Lodging Refresh:

- How well did the Proposer describe its past experiences negotiating discounts with travel providers and how those experiences can be leveraged and applied to this contract?
- How well did the Proposer describe its plan to administer the recruiting and onboard of lodging providers and management of the hotel directory?

4.10.2.2.9 Additional Services

- How well does the Proposers explanation of communications offered to advise travelers of last-minute changes, delays, ticket changes, airport changes, and cancellations, etc. to their trip, fit the needs of Participating Entities? This includes communications for trips booked via online and agent assisted.
- How well does the Proposer describe duty of care and risk management services provided to each Participating Entity?

- How well does the Proposer's process for issuing credits meet the Participating Entries needs?
- How well does the Proposer describe how commissions and incentives earned are tracked and reconciled, including air, rail, hotel, car rental, and GDS?

4.10.2.2.10 Website

- How well does the process for developing and maintaining a user-friendly website meet the needs?
- How well does the Proposer describe its process for responding to afterhours travel requests in a timely manner?

4.10.2.2.11 Customer Services

- How well does the Proposer meet the needs of the Participating State in customer service?
- How well does the Proposer describe its process for responding to afterhours travel requests in a timely manner?

4.10.2.2.12 General Reporting and Other Reporting Areas

How well does the Proposer describe its reporting capabilities in detail, and provided examples of detailed management reports?

4.10.2.2.12.1 Accounting:

How well does the Proposer describe its reporting capabilities in detail and provide examples of detailed accounting reports?

4.10.2.2.12.2 Customized:

How well does the Proposer describe and demonstrate the ability to customize reports as requested and the timeline to deliver the report?

4.10.2.2.12.3 Unused Ticket

- How well does the Proposer explain its utilization of the unused ticket process and describe the methods/processes that will be used to ensure unused tickets are refunded and/or credited as required?
- How well does the Proposer describe the tracking of unused electronic/and or paper airline tickets and vouchers?

4.10.2.3 Additional travel Related Services Available:

Did the Proposer suggest and offer other value-added services? How would those meet the needs of the Participating Entity?

4.10.2.4 Implementation / Onboarding

4.10.2.4.1 Transition

- How well did the Proposer describe its transition and training process that will be used to ensure a smooth implementation?
- How well does the Proposer describe the transition and/or set up process for existing traveler profiles?

4.10.2.4.2 Implementation

- How well did the Proposer provide a draft implementation plan that includes timelines for implementation, key milestone dates, deliverables, and an organizational chart defining DAS's responsibilities?
- How well did the Proposer identify key individuals who will be responsible for implementation, their roles and responsibilities?
- Did Proposer specify all training to be provided including training for travel DAS staff, Statewide Travel Program Staff, travelers

4.10.2.4.3 Disengagement:

How well does the Proposers describe the process and tools to assist the Participating Entity in transition to a subsequent solution?

4.10.2.4.4 Program Management and Data Feed

- How well does the Proposer meet the needs of the Participating Entity?
- How well does the Proposer describe the management of Authorized User's and Participating Entity's profiles?

4.10.2.4.5 Data Management and Security

How well does the Proposer's plan meet the needs of the Participating Entity?

4.10.2.4.6 Profile Data

- How well does Proposer's plan to manage and secure Authorized User's data describe Proposer's understanding the needs of the Authorized Users.?
- How well does Proposer's plan ensure the proper level of security?

4.10.2.4.6.1 System Management

How well does the Proposer's description of how security gaps are repaired meet the needs of the Participating Entity?

4.10.2.4.6.2 Data Confidentiality

- How well does the Proposer describe its security policies and procedures for confidential information?
- How well does the Proposer's plan satisfy the needs of the Authorized User in the event of a data security related issue?

4.10.2.4.7 Training

- How well does the description of training available meet the needs of the Participating Entity?
- How well did the Proposer identify the types of training documentation that will be provided (i.e., user manuals, guides, etc.)?
- How well does the Proposer describe the training process for the reporting function of the Online Booking Tool?
- How does the Proposer's plan meet the needs of the Participating Entity and Lead State?

4.10.2.4.8 Disaster Recovery

How well did the Proposer detailed description of the of the company's Disaster Recovery Plan?

4.10.2.4.8.1 Server Failure

How well does the Proposer describe server failure procedures in case of a disaster?

4.10.2.4.8.2 Communication

How well does the Proposer's communication plan including the COVID-19 or similar disaster meet the needs of the Participating Entity?

4.10.2.4.9 Subcontracting

- How well does the Proposer's response describe which services will be sub-contracted and implementation is managed?
- How well does the Proposer's response describe technical solutions from sub-contractors?

4.10.2.5 Program Outreach

- How well does the plan meet the plan for program outreach needs of the Participating Entries?
- A description of the expected results at the end of the first year and subsequent years of the contract?
- How well does the plan outline working with NASPO Value point and their outreach team?

4.11 ROUND 1 NEXT STEP DETERMINATION

DAS may determine the Apparent Successful Proposer at the conclusion of Round 1 evaluation, or DAS may conduct additional rounds of competition if in the best interest of the State and Participating Entities. Additional rounds of competition may consist of, but will not be limited to:

- Establishing a Competitive Range
- Presentations/Demonstrations/Additional Submittal Items

- Interviews
- Best and Final Offers

4.12 ROUND 1 COMPETITIVE RANGE

4.12.1 Competitive Range Determination

If DAS elects to conduct additional rounds of competition, Proposers with the 3 highest scoring Round 1 Proposals will advance to Round 2. DAS may increase or decrease the number of Proposers advancing to Round 2 if there is a natural break in the scores. No more than the highest 5 scoring proposers will be interviewed. DAS will post a notice in OregonBuys of the Competitive Range Determination for Round 1, which includes the Proposers advancing to Round 2.

4.12.2 Competitive Range Protest

Proposers excluded from Round 2 may submit a Written protest of Competitive Range. Protests must:

- Be emailed to the SPC;
- Reference the RFP number;
- Identify Proposer's name and contact information;
- Be sent by an authorized representative
- State the reason for the protest;
- Be received by the due date and time identified in the Notice of Competitive Range; and

DAS will address all protests within a reasonable time and will issue a Written decision to the respective Proposer. Protests that do not include the required information may not be considered by DAS.

4.13 ROUND 2 PROCUREMENT PROCESS

4.13.1 PRESENTATIONS / DEMONSTRATIONS

Proposers progressing to Round 2 will be invited to participate in Proposer presentation/demonstrations. Proposers will be notified in writing, either by hard copy or electronically. The notification will provide information about the specific time and location of the presentation/demonstrations. Presentation/demonstrations may be in person at a location determined by DAS; however, DAS may elect to conduct presentations/demonstrations via teleconference or video conference. Proposers will be provided an opportunity to provide clarification or further detail to their proposal submitted and respond to questions pertaining to the needs of the RFP. Further details will be included with Notice of Competitive Range.

4.13.2 Statewide Security Standards Spreadsheet (Scored)

Solution Security is extremely important to DAS. Yet, Lead State recognizes that security requirements may be satisfied by more than one approach. In order to assist the evaluation of the Proposal, Proposer shall address the security requirements set forth in the *Statewide Security Standards Spreadsheet* for the proposed Solution. This spreadsheet will be provided to Round 2 Proposers as an amendment to this RFP at the time Round 2 notifications are

sent to the Proposer. Proposer shall complete the spreadsheet and insert comments.
Proposer shall submit the completed spreadsheet with its Round 2 materials.

The responses will not be scored, but, if the Proposer solution does not meet the security requirements, DAS may reject the Proposal.

4.13.3 COST EVALUATION

The SPC will conduct the cost evaluation. The Cost Proposal is worth a total of 300 points. As noted on the Cost Matrix (Attachment I), the RFP requests amounts for six (6) different fees: (a) Full Service Agent Fee; (b) Online Transaction Fee; (c) After Hours Fee; (d) Hotel Only Booking Fee; (e) Car Rental Only Booking Fee; and (f) Hotel and Car Only Booking Fee. Proposal shall provide a fee for each as required. Each separate fee is worth a maximum of 50 points to equal a total of 300 points for the Cost Proposal.

Any submitted line- item fee of zero will receive the full cost points possible (50).

The SPC will award a cost score for each separate fee based upon the percentage of the proposed cost as compared to the lowest Proposer's cost using the following formula:

$$\frac{\text{Lowest greater than zero fee being scored}}{\text{fee being scored}} \times \begin{matrix} \text{cost points possible} \\ \text{(i.e. 50)} \end{matrix} = \text{cost Score}$$

The SPC will add together Proposer's cost points for each separate fee for a total cost

4.13.4 Security Discussion (Not Scored)

At Proposer's discretion, Proposer may request a meeting with the SPC and the Office of the State Chief Information Officer's Cyber Security Section (CSS) to discuss the Statewide Information Security Standards spreadsheet.

If Proposer requests a meeting, Proposer shall collaborate with the SPC to schedule this discussion for an approximate 30-minute period of time prior to the time the submittal is due.

4.13.5 PREFERENCES

4.13.5.1 Reciprocal Preference

For evaluation purposes per OAR 125-246-0310, DAS shall add a percent increase to each out-of-state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Proposer in the [Proposer's state](#).

4.13.5.2 Recycled Materials

Agency will give preference to Proposers offering products manufactured using Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price according to any applicable reciprocal preference.

4.13.5.3 Tiebreakers

Oregon Supplies: If DAS receives Proposals identical in price, fitness, availability and quality and chooses to award a Master Agreement, DAS shall award the Master Agreement in accordance with the procedures outlined in OAR 125-246-0300.

4.14 ROUND 1 POINT AND SCORE CALCULATIONS

TOTAL POINTS POSSIBLE :		900
ROUND 1 POINTS POSSIBLE		
3.4.3	Technical Requirements	60
3.4.4	Travel Management Services	90
3.4.5	Additional travel Related Services Provided	50
3.4.6	Implementation/ Onboarding	80
3.4.7	Program Management	75
3.4.8	Program outreach	70
3.4.2	References	30
ROUND 2 POINTS POSSIBLE		
4.13.1	Presentation/Demonstration	145
4.13.3	Cost Matrix	300

Scores are the values (0 through 10) assigned by each evaluator.

Points are the total possible for each section as listed in the table below.

The SPC will average all scores for each evaluation criterion. The average score will be used as a percentage multiplier of the maximum possible points for that criterion. 1=10%, 5=50%, 7.2=72%, 9=90%, etc. Price points are calculated as stated in the Price Evaluation section.

EXAMPLE:

Proposer A receives scores of 10, 9, and 9.5 for criterion worth 50 points. The SPC averages 10, 9, and 9.5 for a score of 9.5 and uses 95% as a multiplier to the possible points of 50. 50 multiplied by 95% is 47.5. Proposer A's points for the criterion is 47.5.

4.15 ROUND 1 RANKING OF PROPOSERS

The SPC will average the scores for each Proposal in a given round of competition (calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members).

DAS will rank all Proposers at the conclusion of the evaluation and scoring and may, in DAS PS's sole discretion, determine an apparent successful Proposer with no additional rounds of competition. If additional rounds are conducted, DAS will rank advancing Proposers at the conclusion of each subsequent round and may determine an apparent successful Proposer at

any time during the solicitation process.

The SPC will combine the average score for each Proposal with Proposer's price score and reference score. After any applicable preference has been applied, SPC will describe the rank order for each Proposer, with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

4.16 NEXT STEP DETERMINATION

At the conclusion of a round of competition, DAS may choose to conduct additional round(s) of competition if in the best interest of the State. Additional rounds of competition may consist of, but will not be limited to:

- Interviews
- Presentations/Demonstrations/Additional Submittal Items
- Discussions and submittal of revised Proposals
- Serial or simultaneous negotiations
- Best and Final Offers

4.16.1 Competitive Range Determination

If DAS PS, in its sole discretion, determines that one or more additional rounds of competition is necessary, it will select a Competitive Range to indicate the Proposers that will be invited to participate in a subsequent round. The Competitive Range may include all, or at DAS PS's sole discretion, some (based primarily on a natural break in the distribution of scores), of the Proposers from a previous round. DAS will post a notice in OregonBuys of its Competitive Range Determination and provide details about the process and schedule for the subsequent round.

4.16.2 Competitive Range Protest

Proposers excluded from a round may submit a Written protest of Competitive Range. Protests must:

- Be emailed to the SPC;
- Reference the RFP number;
- Identify Proposer's name and contact information;
- Be sent by an authorized representative
- State the reason for the protest; and
- Be received within 7 calendar days after issuance of the Notice of the Competitive Range unless a different due date and time is specified in such notice.

DAS will address all protests within a reasonable time and will issue a Written decision to the respective Proposer. Protests that do not include the required information may not be considered by DAS PS.

4.17 ROUND 2 PROCUREMENT PROCESS

4.17.1.1 Presentation/ Demonstrations and Cost

Proposers progressing to Round 2 will be invited to participate in the Proposer Presentations and Cost round. Presentations may be in person at a location determined by DAS; however, DAS may elect to conduct interviews via Teams or other video conferencing platforms. Further details on this section will be included with Notice of Competitive Range.

4.18 SCORING AND RANKING OF PROPOSERS FOR SUBSEQUENT ROUNDS

If DAS conducts two or more rounds of competition, the SPC will determine the cumulative score for Proposers advancing through all rounds of competition by adding the scores from each completed round. The Proposer with the highest cumulative score will receive the highest final ranking.

SECTION 5: AWARD AND NEGOTIATION

5.1 AWARD NOTIFICATION PROCESS

5.1.1 Award Consideration

DAS PS, if it awards a Master Agreement, shall award a Master Agreement to the highest ranking Responsible Proposer(s) based upon the scoring methodology and process described in Section 4. DAS may award less than the full Scope defined in this RFP.

5.1.2 Intent to Award Notice

DAS will notify all Proposers in Writing that DAS intends to award a Master Agreement to the selected Proposer(s) subject to successful negotiation of any negotiable provisions.

5.2 INTENT TO AWARD PROTEST

5.2.1 Protest Submission

An Affected Proposer will have 7 calendar days from the date of the Intent to Award notice to file a Written protest.

A Proposer is an Affected Proposer only if the Proposer would be eligible for Master Agreement award in the event the protest was successful and is protesting for one or more of the following reasons as specified in ORS 279B.410:

- All higher ranked Proposals are non-Responsive.
- DAS has failed to conduct an evaluation of Proposals in accordance with the criteria or process described in the RFP.
- DAS abused its discretion in rejecting the protestor's Proposal as non-Responsive.
- DAS's evaluation of Proposal or determination of award otherwise violates ORS Chapter 279B or ORS Chapter 279A.

If DAS receives only one Proposal, DAS may dispense with the evaluation process and Intent to Award protest period and proceed with Master Agreement Negotiations and award.

5.2.1.1 Protests must:

- Be delivered to the SPC via email,

- Reference the RFP number,
- Identify Proposer's name and contact information,
- Be signed by an authorized representative,
- Specify the grounds for the protest, and
- Be received within 7 calendar days of the Intent to Award notice.

5.2.2 Response to Protest

DAS will address all timely submitted protests within a reasonable time and will issue a Written decision to the respective Proposer. Protests that do not include the required information may not be considered by DAS.

5.3 APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS

Proposer who are selected for a Master Agreement award under this RFP will be required to submit additional information and comply with the following:

5.3.1 Insurance

Prior to award, Proposer shall secure and demonstrate to DAS proof of insurance as required in this RFP or as negotiated. Insurance Requirements are found in Attachment A, Section 20, Insurance.

5.3.2 Taxpayer Identification Number

Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form when requested by DAS or when the backup withholding status or any other relevant information of Proposer has changed since the last submitted W-9 form, if any.

5.3.3 Business Registry

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Master Agreement. Visit <http://sos.oregon.gov/business/pages/register.aspx> for Oregon Business Registry information.

5.3.4 Responsibility Inquiry

Prior to award, Proposer shall be required to complete and submit Attachment F — Responsibility Inquiry.

5.3.5 Pay Equity Certification

If selected for award and the Master Agreement (including all Contracts entered into under it) value exceeds \$500,000 and Proposer employs 50 or more full-time workers, Proposer shall submit to DAS a true and correct copy of an unexpired Pay Equity Compliance Certificate, issued to the Proposer by the Oregon Department of Administrative Services. For instructions on how to obtain the Certificate, visit

<https://www.oregon.gov/das/Procurement/Pages/PayEquity.aspx>.

ORS 279B.110(2)(f) requires that Proposer provide this prior to execution of the Master Agreement.

5.3.6 Nondiscrimination in Employment

As a condition of receiving the award of a Master Agreement under this RFP, Proposer must certify by Signature on Attachment C - Proposer Information and Certification Sheet, in accordance with ORS 279A.112, that it has in place a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. The policy and practice must include giving employees a written notice of a policy that both prohibits, and prescribes disciplinary measures for, conduct that constitutes sexual harassment, sexual assault, or unlawful discrimination.

5.3.7 Pay Equity Compliance

As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.

Commencing on January 1, 2019, Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Master Agreement and a failure to comply constitutes a breach that entitles DAS to terminate this Master Agreement for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

5.4 MASTER AGREEMENT NEGOTIATION

5.4.1 Negotiation

After selection of a successful Proposer, DAS may enter into Master Agreement negotiations with the successful Proposer. By submitting a Proposal, Proposer agrees to comply with the requirements of the RFP, including the terms and conditions of the Sample Master Agreement (Attachment A). With the exception of those terms listed below for negotiation.

Proposer shall review the attached Sample Master Agreement. The State of Oregon intends to enter into a Master Agreement with the successful Proposer substantially in the form set forth in Attachment A. It may be possible to negotiate some provisions of the final Master Agreement; however, many provisions cannot be changed. Proposer is cautioned that the State of Oregon believes modifications to the standard provisions constitute increased risk

and increased price to Authorized Purchasers.

Any subsequent negotiated changes are subject to prior approval of the Oregon Department of Justice and NASPO ValuePoint.

All items, except those listed below, may be negotiated between DAS and the apparent successful Proposer in compliance with State of Oregon laws and constitutional requirements:

- Choice of law
- Choice of venue
- Constitutional requirements
- Any and all federal and state law rules, requirements, policies and procedures
- NASPO ValuePoint Administrative Fee

In the event that the parties have not reached mutually agreeable terms within 120 calendar days of the date of the Notice of Intent to Award, DAS may terminate Negotiations and commence Negotiations with the next highest-ranking Proposer.

5.5 CERTIFIED FIRM PARTICIPATION

Pursuant to Oregon Revised Statute (ORS) Chapter 200, DAS encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. DAS also encourages joint ventures or subcontracting with certified small business enterprises. For more information, visit:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz>

If the Master Agreement has potential subcontracting opportunities, the successful Proposer may be required to submit a completed Certified Disadvantaged Business Outreach Plan (Attachment F) prior to execution.

5.6 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may this section be construed as a waiver by the State of Oregon 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, to or from any Claim or consent to the jurisdiction of any court.

5.7 OWNERSHIP/PERMISSION TO USE MATERIALS

All Proposals are public record and are subject to public inspection after DAS issues the Notice of the Intent to Award. Application of the Oregon Public Records Law will determine whether any information is actually exempt from disclosure.

All Proposals submitted in response to this RFP become the Property of DAS. By submitting a Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating a Master Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law ORS 192.311 through 192.478. Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

5.8 CANCELLATION OF RFP; REJECTION OF PROPOSAL; NO DAMAGES.

Pursuant to ORS 279B.100, DAS may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State or DAS, as determined by DAS. Neither the State nor DAS is liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

5.9 COST OF SUBMITTING A PROPOSAL

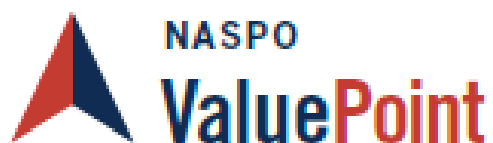
Proposer is responsible for all costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

5.10 STATEWIDE E-WASTE/RECOVERY PROCEDURE

If applicable, Proposer shall include information in its Proposal that demonstrates compliance with the Statewide E-Waste/Recovery Procedure #107-011-050_PR. Visit the DAS website www.oregon.gov/das and use the search bar feature to locate the procedure.

5.11 RECYCLABLE PRODUCTS

Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the Services or Work set forth in this document and the subsequent Master Agreement. (ORS 279B.025)



NASPO ValuePoint Master Agreement

TRAVEL MANAGEMENT SERVICES

This NASPO ValuePoint Master Agreement ("Master Agreement") is between the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other **Participating Entities** and _____ ("Contractor"). This Master Agreement is effective on the date that it has been signed by the parties and has been approved as required by applicable law ("Effective Date").

1. Master Agreement and Order of Precedence.

- 1.1. Master Agreement. This Master Agreement consists of the following documents, which are attached to this Master Agreement and incorporated by this reference, and listed in descending order of precedence:
 - 1.1.1. This Master Agreement less all exhibits,
 - 1.1.2. Exhibit C (Federal Terms and Conditions),
 - 1.1.3. Exhibit D (Security Requirements and Rider to Terms of Service),
 - 1.1.4. Exhibit A (Services and Rates), and
 - 1.1.5. Exhibit B (Form Participating Addendum).
- 1.2. These exhibits must be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an exhibit or attachment.

2. Participating Addenda.

- 2.1. Any Request for Services placed under this Master Agreement consists of a Participating Entity's Participating Addendum ("PA"), substantially in the form attached hereto as Exhibit B, including any Participating Entity specific terms. A Participating Entity's specific terms in its Participating Addendum may include but are not limited to applicable methods or processes available to Purchasing Entities and their Travelers to create accounts and request Services, conditions on the security and privacy of information on individuals, and conditions on software licenses or user terms for online, on-premises, or mobile software

and services.

2.2. In the event of a conflict between the terms and provisions of this Master Agreement and the terms and conditions of a Participating Addendum entered into between a Participating Entity and Contractor, the terms and provisions of the Participating Entity's Participating Addendum will control for conflicts under that Participating Addendum.

2.3. Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda may not include a term of agreement that exceeds the term of this Master Agreement.

3. Definitions.

Acceptance means acceptance of Services as set forth in Section 16 of this Master Agreement.

Authorized User(s) includes individuals authorized to hold accounts for Services, such as NASPO ValuePoint representatives, and employees of Participating Entities and their Authorized Travelers."

Contract means the terms and conditions of this Master Agreement and the applicable Participating Addendum, together with each Request for Service or other agreed upon ordering instrument issued by a Purchasing Entity.

Contractor means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

GSA Per-Diem Lodging means the domestic GSA lodging per diem allowance rate in effect at the location and on the date of the room occupancy as published on the Internet at <https://www.gsa.gov/portal>, as Federal Travel Regulation (FTR) Bulletins.

Lead State means the State of Oregon, in its role of centrally administering the Master Agreement, who is a party to this Master Agreement.

Master Agreement means this underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and Contractor, including as 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 this 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 Lead State.

Request for Services means a method by which an Authorized User of a Purchasing Entity may order Services, whether in person, in writing, by phone or other electronic means used by a Purchasing Entity to order the Services.

Participating Addendum means a bilateral agreement executed by Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating

Entity specific language or other requirements (e.g. ordering procedures specific to the Participating Entity, entity-specific terms and conditions).

Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a state, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

Participating State means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

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, who issues a Request for Services under a Participating Addendum against the Master Agreement and becomes financially committed to the purchase.

Purchasing Entity Data means any information received or created relating to a Purchasing Entity or its Travelers, including information created and information stored through the Services, and information created and collected by Contractor regarding Purchasing Entity and its Travelers during the course of providing the Services, including personally identifiable information.

Services means all effort to be expended by Contractor under this Master Agreement, Participating Addendum that are necessary to deliver the Travel Management Services.

Third Party Intellectual Property means any intellectual property owned by parties other than State or Contractor. Third Party Intellectual Property includes Software owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

Travel Management Services means Services described in Exhibit A, Services and Rates, of this Master Agreement.

4. Term of the Master Agreement; Non-exclusivity.

4.1. **Generally.** The initial term of this Master Agreement is for two years from the Effective Date. This Master Agreement may be extended beyond the initial term for a maximum of four additional years at Lead State's discretion, upon review of requirements of Participating Entities, current market conditions, and Contractor performance, and as agreed upon by a fully executed amendment between the Lead State and Contractor.

4.2. **Not Exclusive.** This Master Agreement is not exclusive. Purchasing Entities retain the right to contract for Services or both through any selection process authorized by law, or to perform the Services themselves. Neither NASPO ValuePoint nor the Lead State guarantees that any specific number of Contracts will be issued or that any specific amount of Products or Services will be required.

4.3. **Thirty Day Extension.** Notwithstanding the foregoing, Lead State, in its sole discretion, may extend this Master Agreement for a maximum of 30 calendar days beyond the expiration of the then-current term. The Contract Administrator shall notify Contractor in writing of the 30 day extension prior to the expiration of the then-current term. Consecutive extensions under this section are not allowed.

5. Amendments.

- 5.1. **Amendments.** The terms of this Master Agreement will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of Lead State and Contractor.
- 5.2. **Services Within Scope.** Lead State may, upon agreement with Contractor, add or modify Travel Management Services that are within the scope of the RFP to this Master Agreement through a duly-executed amendment.

6. Participants and Scope.

- 6.1. **Requirement for Participating Addendum.** Contractor may not deliver Services under this Master Agreement to a Participating Entity until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The Master Agreement Terms and Conditions are applicable to any Request for Services by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent the Master Agreement Terms 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, governing law and venue relating to Requests for Services 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. Request for Services) used by the Purchasing Entity to request Services.
- 6.2. **Authorized Use.** Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual states' statutes 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.
- 6.3. **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. 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 incur no financial obligations on behalf of other Purchasing Entities.
- 6.4. **Notice of Participating Addendum.** 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 databases.
- 6.5. **Eligibility for a Participating Addendum.** An eligible entity that is not a state may under some circumstances sign its own Participating Addendum, subject to the consent to

participation by the Chief Procurement Official of the state where the entity is located. Coordination of requests for such participation is through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; such entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

- 6.6. **Prohibition on Resale.** Subject to any specific conditions included in this Master Agreement or a Participating Addendum, Purchasing Entities may not resell Services purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit 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.
- 6.7. **Individual Customers.** Except to the extent modified by a Participating Addendum, each Purchasing Entity will follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for its 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 its purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Purchasing Entity individually.

7. Services.

- 7.1. **Authorized Purchasing Agent.** All communications concerning administration of Services must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing by the Purchasing Entity.
- 7.2. **Service Order Period.** Requests for Services must be placed prior to the termination date of this Master Agreement but may have a delivery date or performance period up to 120 calendar 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.
- 7.3. **Performance of Services.** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Request for Services then outstanding at the time of such expiration or termination. Contractor shall not honor any Request for Services placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Requests for Services 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.
- 7.4. **Purchasing Entity or Purchasing Entity Resources.** If any Contract or Request for Service under this Agreement requires Purchasing Entity or Traveler to provide any resources, and Purchasing Entity or Traveler fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner but for a period not to

exceed 30 calendar days, Contractor's sole remedy will be an extension of the applicable delivery dates corresponding to the delay caused by Purchasing Entity's or Traveler's failure.

- 7.5. **Establishment of Account.** From time to time, Purchasing Entities may request and work with Contractor to establish a travel account and the applicable documentation and processes permitting Travelers to obtain one or more of the Services described in the Services and Rates attached hereto as Exhibit A.
- 7.6. **Terms of Service.** Any Contractor or third party terms of service for accounts or other online services are subject to Exhibit D of this Master Agreement unless a Participating Addendum specifies otherwise.
- 7.7. **Requests for Service.** Once an account is established and the Purchasing Entity and Contractor have agreed upon an ordering process, Travelers may order or submit requests for one or more of the Services by a method and in a form to be agreed upon between Contractor and Purchasing Entity ("Request for Service"). Contractor shall fulfill each Request for Services in accordance with the applicable Contract.
- 7.8. **Transition Services.** Contractor shall at a Participating Entity's option and subject to a written agreement between Contractor and the applicable Participating Entity, provide transition services to support a responsible and secure transition of Services and Purchasing Entity Data to another service provider or to its Purchasing Entities.

8. Compensation.

- 8.1. **Rates and Fees.** Purchasing Entity shall pay Contractor for Services performed and Accepted by a Purchasing Entity including through its Travelers in accordance with a Contract reflecting the rates and fees in Exhibit A, which represent the not-to-exceed prices available to any Purchasing Entity. Purchasing Entity will not pay Contractor for Services performed before the date this Agreement or the applicable Request for Service or after the termination of this Agreement.
- 8.2. **Expenses.** Purchasing Entity will not pay or reimburse any expenses incurred by Contractor during the completion of the Services except as authorized in a specific Contract.
- 8.3. **Price Renegotiation.** Contractor shall keep pricing specified in Exhibit A fixed for at least the first 12 full months of this Master Agreement. Thereafter, Lead State and Contractor may adjust pricing no more than once annually by written amendment. Contractor shall submit any pricing increase requests to Lead State in writing and provide substantiating evidence that each request is based on demonstrable market changes impacting the cost of the Services. The request must show all proposed increases by line item and include supporting documentation acceptable to Lead State. Lead State may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data or any other relevant manufacturer or industry data substantiating the increase. However, a price increase may not produce a higher profit margin for Contractor than at the beginning of the initial term of this Master Agreement. The increase may not exceed 2% of the price immediately before the increase. Pricing changes will apply to Service Requests entered on and after the effective date of the pricing change.

9. Payment and Invoicing.

- 9.1. **Payment for Services.** All purchases by a Purchasing Entity must be made using a method

of payment listed in this Master Agreement or the applicable Participating Addendum. This includes but is not limited to purchasing cards or travel cards. A personal Traveler's credit card is prohibited, unless allowed under the Purchasing Entity's travel policy.

10. Payment Methods.

- 10.1. **Generally.** Participating Entity and its third party provider (i.e. hotel or car rental company) will agree upon the method of payment. Provided, however, that the third party providers must accept all major credit cards (Visa, MasterCard, Discover, and American Express) and Contractor shall accept all major credit cards (Visa, MasterCard, Discover, and American Express) through its booking tools.
- 10.2. **Restrictions.** Additional fees, taxes, surcharges or any other charges must not be assessed to the Traveler when accepting major credit cards for payment unless otherwise stated within this Agreement or Addendum thereto or required by law. Contractor shall not pre-charge estimated room charges or first day or night room charges or rental charges.
- 10.3. **Billing Dispute Resolution.** A Purchasing Entity's contract administrator may dispute charges by sending Contractor written notice detailing the dispute within 30 calendar days of the date of invoice. Contractor shall investigate the dispute and make appropriate adjustments to the specific account.
- 10.4. **EFT Transaction Procedures.** Contractor and Purchasing Entity may establish procedures for EFT transactions at the time of account setup. In the event Contractor, during the term for the account, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and required information must be received by the Purchasing Entity's contract administrator a minimum of 60 calendar days prior to the effective date of the change. Contractor's failure to provide accurate information in a timely manner may delay payment of amounts otherwise properly due.
- 10.5. **Funds Available and Authorized; Payments.** Purchasing Entity's payment of amounts under a Contract is contingent on Purchasing Entity receiving funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to make payments under the Contract. Purchasing Entity shall not order Services under a Contract unless it has received appropriate funding to meet its financial obligations to such Service requests.

11. NASPO ValuePoint Provisions.

11.1. **Applicability.** NASPO ValuePoint is not a party to this Master Agreement. The terms set forth in this Section 11 are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement with the right to enforce the provisions of this Section 11, NASPO ValuePoint Provisions.

11.2. **Administrative Fees.**

11.3. **NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 calendar days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of Services under this Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to have been included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

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

11.5. **NASPO ValuePoint Summary and Detailed Usage Reports.**

11.5.1. **Summary Sales Data.** 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>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than 30 calendar days following the end of the calendar quarter (as specified in the reporting tool).

11.5.2. **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 Request for Services or Purchase Order identifier/number(s); (5) Request for Services or Purchase Order Type (*e.g.* sales order, credit, return, upgrade, determined by industry practices); (6) Request for Services date (as Purchase Order date); (7) Ship Date; (8) and line item description, including product number if used. The report must 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 30 calendar days after the end of the reporting period. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team

electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

11.5.3. Reporting on Personal Use. 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 ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use 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.

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

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

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

11.6.2. Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addenda are executed, provide plans to launch the program for a Participating Entity. Plans will include time frames to launch the agreement and confirmation that Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

11.6.3. Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

11.6.4. Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

11.6.5. Most Favored Customer. Contractor shall, within 30 calendar days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-

customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Requests for Services from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

- 11.7. **Cancelation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel this Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if Contractor fails to record or report revenue for three consecutive quarters, upon 60 calendar day written notice to Contractor. Cancelation based on nonuse or under-utilization will not occur sooner than [two years] after of the Effective Date of this Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.
- 11.8. **Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use this Master Agreement.
- 11.9. **Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of this Master Agreement, the terms of which will be the same or similar (and not less favorable) than the terms set forth in this Master Agreement.
12. **Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
13. **No Representations.** Contractor shall not make any representations of NASPO ValuePoint's, Lead State's, any Participating Entity's, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the Services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of this Master Agreement for cause.
14. **Price and Rate Guarantee Period.** All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least (30) calendar days prior to the proposed effective date of the price or rate adjustment. Requests

for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless authorized by Lead State. No retroactive adjustments to prices or rates will be allowed.

15. Compliance with Applicable Law. Any and all Services offered and furnished must comply fully with all applicable federal and state laws, regulations, and executive orders, including the Federal Terms and Conditions set forth in Exhibit C.

16. Inspection and Acceptance.

16.1. Generally. Where a Participating Addendum does not otherwise specify a process for inspection and Acceptance, this section governs. This section does not and is not intended to limit rights and remedies under the applicable commercial code.

16.2. Inspection. All Services are subject to inspection at reasonable times and places during performance of a Contract. 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.

16.3. Deficiencies. If any Services do not conform to Contract requirements, the Purchasing Entity may require Contractor to perform the Services again in conformity with Contract requirements, at no increase in order amount. When errors or defects cannot be corrected by re-performance, the Purchasing Entity may require 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.

17. Payment. Payment after Acceptance is normally made within 30 calendar days following the date Services are delivered or the date a correct invoice is received, whichever is later. Subject to applicable law, after 45 calendar days Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Request for Services. Payments may be made via a purchasing card with no additional charge.

18. Warranties.

18.1. **Contractor's General Representations and Warranties.** Contractor represents and warrants:

18.1.1. Contractor has the power and authority to enter into and perform under this Master Agreement and each Contract.

18.1.2. This Master Agreement, when executed and delivered, will be a valid and binding obligation of Contractor enforceable according to its terms.

18.1.3. Contractor will, at all times during the term of this Master Agreement, be qualified to do business in accordance with the laws of each applicable Participating Entity, professionally competent and duly licensed to perform the Services.

18.1.4. Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any

federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services will not violate any such law, ordinance, regulation or order.

- 18.2. **Contractor's Performance Warranty.** Contractor represents and warrants that Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence, and Contractor and Contractor's employees agents and subcontractors will perform the Services described in this Master Agreement in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Services.

19. Intellectual Property Ownership and Licenses.

- 19.1. **Purchasing Entity Intellectual Property** means any intellectual property that is owned by a Purchasing Entity, including Purchasing Entity Data described in Exhibit D. A Purchasing Entity Intellectual Property includes any derivative works and compilations of any Purchasing Entity Intellectual Property. Purchasing Entity grants Contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Purchasing Entity Intellectual Property, including Purchasing Entity Data, only to fulfill the purposes of this Contract. Purchasing Entity's license to Contractor is limited by the term and the confidentiality and security obligations of the Contract.
- 19.2. **Contractor Intellectual Property.** Contractor Intellectual Property means any intellectual property that is owned by Contractor and contained in or necessary for the use of the Services, and includes any software owned by Contractor, including but not limited to the [product] as described in Exhibit D, documentation, and derivative works and compilations of any Contractor Intellectual Property. Contractor retains ownership of all Contractor Intellectual Property that Contractor delivers to Purchasing Entities and their Travelers pursuant to the Services. Subject to the execution of a Participating Addendum, Contractor grants each Purchasing Entity a license to use, copy, display, distribute, and transmit Contractor Intellectual Property [including the Subscription Services as set forth in Exhibit D] embodied in the Services, and to authorize others to do the same on it and its Travelers' behalf.
- 19.3. **Work Product.** Except as specified in Exhibit D for Purchasing Entity Data and in Exhibit C (Federal Terms and Conditions) as applicable, Contractor owns all work product. Such work product is subject to the license in Section 19.2.
- 19.4. **Third Party Intellectual Property** means any intellectual property owned by parties other than a Purchasing Entity or Contractor. Third Party Intellectual Property includes [but is not limited to the product as set forth in Exhibit D], and derivative works and compilations of any Third Party Intellectual Property. Contractor shall secure licensing for Third Party Intellectual Property necessary for Purchasing Entities to access and receive the Services, and Exhibit D will be deemed to include any additional licenses for Third Party Intellectual Property approved by Lead State.
- 19.5. **No Rights.** Except as expressly set forth in this Master Agreement or Participating Addendum, nothing in this Contract may be construed as granting to or conferring upon

Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by Lead State, any Participating Entity, or any Purchasing Entity. Except as expressly set forth in this Master Agreement or in a Participating Addendum, nothing in these terms may be construed as one party granting to or conferring upon the other any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.

- 19.6. **No Rights in Marks.** Neither Lead State, any Participating Entity, any Purchasing Entity, or Contractor grants the other the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Master Agreement or a Participating Addendum.

20. Insurance.

- 20.1. **Term.** Contractor shall, during the term of this Master Agreement and each Request for Services, maintain in full force and effect, the insurance described in this Section 20. A Participating Entity may negotiate alternative insurance requirements in its Participating Addendum.
- 20.2. **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 20.3. **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 20.3.1. Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 20.3.2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 20.4. **Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or that expiration, nonrenewal or expiration otherwise may occur.
- 20.5. **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

- 20.6. Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in this Section 20, except the endorsement must be provided to the applicable Participating State or Participating Entity.
- 20.7. Furnishing of Certificates. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within 30 calendar days of the Effective Date of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within 30 calendar 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.
- 20.8. Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Request for Services.

21. Records Administration and Audits.

- 21.1. Generally. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement, Participating Addendum, and the Services to the extent and in such detail as required to adequately reflect performance and administration of payments and fees. Contractor shall permit 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, the applicable Participating Addendum, and Services delivered to a Purchasing Entity for the purpose of making audits, examinations, excerpts, and transcriptions.
- 21.2. Access includes records and Contractor's officers, agents, contractors, subcontractors, employees, and facilities to:
- 21.2.1. Validate Contractor's written security risk management plan (See Exhibit D), or
 - 21.2.2. Gather or verify additional information required to meet any state or federal laws, rules, or orders, including those regarding Purchasing Entity Data.
- 21.3. The rights under this Section 21 survive for a period of 6 years following termination of this Master Agreement and each Participating Addendum, or final payment for any Request for Services placed by a Purchasing Entity, whichever is later, or such longer period as is required by a Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 21.4. Without limiting any other remedy available to any governmental entity, Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or a Participating Addendum or underpayment of fees found as a result of the examination of Contractor's records.
- 21.5. The rights and obligations herein exist in addition to any quality assurance

obligation in the Master Agreement requiring Contractor to self-audit contract obligations and that permits Lead State to review compliance with those obligations.

- 21.6. **Notice.** Access to facilities, systems, and records under this section will be granted following reasonable notice to Licensor. Records include paper or electronic form, and related system components and tools (including hardware and software), required to perform examinations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

- 22.1. **Confidentiality.** Contractor and its employees, subcontractors, and agents may, in the course of providing Services under this Master Agreement or a Contract, 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, subcontractors, 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 must 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.
- 22.2. **Non-Disclosure.** Contractor shall comply with Exhibit D, and shall otherwise 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 Services. Contractor shall advise each of its employees, subcontractors, 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 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 or a Participating Addendum, 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 shall 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, upon advance written consent of Purchasing Entity, return to Purchasing Entity or destroy all documents, papers, electronic media, and other matter Contractor holds (including through a third party) 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.

22.3. 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.

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

22.5. The rights granted Purchasing Entities and Contractor obligations under this section also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Purchasing Entity Data relating to Services that identify the entity/customer, Service dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to 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 Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

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

24. Assignment/Subcontracts

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

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

25. Changes in Contractor Representation. Contractor shall notify Lead State of changes in Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. Lead State reserves the right to approve changes in key personnel. Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as the key personnel being replaced.

26. Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding

whatsoever, and shall not hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

27. Use Of Subcontractors; Responsibility for Taxes and Withholding.

- 27.1. Contractor shall not use subcontractors to perform the Services unless specifically authorized to do so by Lead State, Participating State/Entity or Purchasing Entity. Contractor represents that any employees assigned to perform the Services, and any authorized subcontractors performing the Services shall perform the Services in accordance with the warranties set forth in Section 18 of this Master Agreement.
- 27.2. Contractor shall perform all Services as an independent contractor. Although Lead State, Participating State/Entity and Purchasing Entity have the right (i) to determine and modify the delivery schedule for Services to be performed and (ii) to evaluate the quality of the completed performance, Lead State, Participating State/Entity and Purchasing Entity cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Master Agreement. Contractor certifies, represents and warrants that Contractor is an independent contractor under all applicable state and federal law. Contractor is not an "officer", "employee", or "agent" as those terms are used in ORS 30.265 of the State of Oregon or DAS.
- 27.3. If Contractor is currently performing work for a state or the federal government or any other entity, Contractor by signature to this Master Agreement represents and warrants: Contractor's performance of this Agreement and any Contract issued hereunder creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing entity (if state or federal agency) would prohibit Contractor's performance of this Master Agreement or any Contract.
- 27.4. Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Master Agreement and any Contract, and Purchasing Entity will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Master Agreement or any Contract.

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

29. Force Majeure. Neither party to this Master Agreement is 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. Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

30. Defaults and Remedies

30.1. The occurrence of any of the following events will be an event of Contractor default under this Master Agreement:

30.1.1. Nonperformance of contractual requirements; or

30.1.2. A material breach of any term or condition of this Master Agreement; or

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

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

30.1.5. Any default specified in another section of this Master Agreement.

30.2. Upon the occurrence of an event of default, Lead State will issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days or longer, in which Contractor shall cure the default. Lead State is not required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if 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 does not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

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

30.3.1. Exercise any remedy provided by law; and

30.3.2. Terminate this Master Agreement and any related Contracts or portions thereof; and

30.3.3. Impose liquidated damages as provided in this Master Agreement; and

30.3.4. Suspend Contractor from being able to respond to future bid solicitations; and

30.3.5. Suspend Contractor's performance; and

30.3.6. Withhold payment until the default is remedied.

30.4. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity will provide a written notice of default as described in this section and will have all of the rights and remedies under this Section 31 regarding its participation in the Master Agreement, in addition to those set

forth in its Participating Addendum. Unless otherwise specified in a Participating Addendum, a Purchasing Entity will provide written notice of default as described in this Section 31 and will have all of the rights and remedies under this Section 31 and any applicable Participating Addendum with respect to any Service order placed by the Purchasing Entity. Nothing in this Master Agreement limits or may be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

31. Waiver of Breach. Failure of Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies does not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by 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 Service order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Services Order is not a waiver and may 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 Service Order.

32. Debarment. 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 Service are delivered under this Master Agreement or Participating Addendum. If Contractor cannot certify this statement, Contractor shall provide a written explanation for review by Lead State.

33. Indemnification

33.1. **General Indemnification.** Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, 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 Contractor, its employees, agents, subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

33.2. **Intellectual Property Indemnification.** Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, Lead State, Participating Entities, Purchasing Entities, along with their officers and employees (each an "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 Services or their use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

33.2.1. Contractor's obligations under this section do not extend to any combination of the Services with any other product, system or method, unless the Services, system or method is:

- (a) provided by Contractor or Contractor's subsidiaries or affiliates;
- (b) specified by Contractor to work with the Services; or

- (c) reasonably required, in order to use the Services 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 Services in combination with such product, system or method.

33.2.2. The Indemnified Party shall notify Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, Contractor will not be relieved from its obligations unless Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to Contractor. If Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it has control over the defense and settlement of it, subject to applicable law. Further, 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 Contractor's reasonable request and expense, information and assistance necessary for such defense. If 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 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.

34. No Waiver of Sovereign Immunity

- 34.1. In no event may this Master Agreement, any Participating Addendum or any contract or any Request for Services issued thereunder, or any act of 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.
- 34.2. This section applies to a claim brought against 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.

35. Governing Law and Venue.

- 35.1. The procurement, evaluation, and award of the Master Agreement is governed by, construed, and enforced in accordance with the laws of Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award is governed by, construed, and enforced in accordance with the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Request for Services against the Master Agreement is be governed by, construed, and enforced in accordance with the laws of Participating Entity's or Purchasing Entity's State.

- 35.2. Venue for any claim, dispute or action concerning the terms of the Master Agreement is in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Request for Services or the effect of a Participating Addendum is in the Purchasing Entity's state.
- 35.3. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if Lead State is a party; a Participating State if a named party; the state where Participating Entity or Purchasing Entity is located if either is a named party.

36. Assignment of Antitrust Rights.

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which Contractor now has or which may accrue to 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 Contractor's obligations under this Master Agreement or Participating Addendum, including, at Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

37. Contract Provisions for Request for Services 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, Contracts funded with federal funds may have additional contractual requirements or certifications required. Federal terms and conditions are in Exhibit C, and are applicable to purchases made with federal funds unless otherwise stated in a Participating Addendum or in a particular Request for Services issued by a Purchasing Entity for incorporation in a Contract.

38. Intended Beneficiaries. Except as specified in this Master Agreement, Lead State and Contractor are the only parties to this Master Agreement and are the only parties entitled to enforce its terms. Nothing in this Master Agreement otherwise gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name in this Master Agreement and expressly described as intended beneficiaries of its terms.

39. Severability. If any provision of this Master Agreement is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions is not affected, and the rights and obligations of the parties will be construed and enforced as if this Master Agreement did not contain the particular provision held to be invalid.

40. Counterparts. This Master Agreement may be executed in several counterparts, all of which when taken together constitute one agreement binding on the parties, notwithstanding that the parties are not signatories to the same counterpart. Each copy of this Master Agreement so executed constitutes an original.

41. Survival. All rights and obligations cease upon termination or expiration of this Master

Agreement, except for the rights and obligations and declarations which expressly or by their nature survive termination, including without limitation this section, and provisions regarding definitions, warranties and liabilities, independent contractor status and taxes and withholding, ownership and license of intellectual property, Contractor's duties of confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, and third party beneficiaries.

42. Integration and Merger. This Master Agreement constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

43. Notices. All notices required under this Master Agreement must be in writing and addressed to the party's Authorized Representative, as identified below. Mailed notices are deemed received 5 calendar days after the post mark date when properly addressed and deposited prepaid into the U.S. postal service. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative. Contractor shall send to Lead State copies of all notices that Contractor sends to a Purchasing Entity.

44. . Time is of the Essence. Contractor agrees that time is of the essence in the performance of its obligations under this Master Agreement, each Participating Addendum, and any Contract.

Authorized Signatures:

Contractor: _____

By: _____

Title: _____ Date: _____

The State of Oregon acting by and through its Department of Administrative Services, Enterprise Goods and Services, Procurement Services

By: _____

Title: _____ Date: _____

Approved pursuant to ORS 291.047 Oregon Department of Justice

By: _____

Sr. Assistant Attorney General (GF0605-21)

Date: _____

Exhibit A to NASPO ValuePoint Master Agreement

SAMPLE PARTICIPATING ADDENDUM

MASTER AGREEMENT # _____

Exhibit ____

Form Participating Addendum

NASPO ValuePoint

PARTICIPATING ADDENDUM

Travel Management Services

Lead by the State of **Oregon**

Master Agreement #: _____

Contractor: _____ (Contractor)

Participating Entity: **State of XXXXX**



1. **Scope:** This Participating Addendum (“Addendum”) covers the acquisition of **Travel Management Services**.

- **Removable Example:** All Goods and accessories listed on the Contractor page of the NASPO ValuePoint website.
- The following Services are not included in this Addendum:
 - Removable Example: Product modifications.
 - Removable Example: Installation services.

Master Agreement Terms and Conditions:

2. **Participation:** [**Removable Instruction:** Participating Entities should ensure this section properly defines the scope of participation.] This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of [XXXXXXX]. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	
Address:	
Telephone:	
Fax:	
Email:	

Participating Entity

Name:	
Address:	
Telephone:	
Fax:	
Email:	

4. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

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

[Removable Instruction]: Insert text here to address specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph.]

5. Purchasing Entity - Contractor Selection: This Addendum is not exclusive; Purchasing Entities may acquire the Services from other providers.

6. Request for Services: Any Request for Services placed by a Purchasing Entity for a Service available under this Addendum will be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the resulting contract agree in writing that another contract or agreement applies to such Request for Services.

7. Participating Addendum Integration: This Addendum and the Master Agreement and their exhibits and attachments, set forth the entire agreement between Contractor and Participating Entity with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified in this Addendum and the Master Agreement and their exhibits and attachments. Any attempt to modify or add or incorporate terms and conditions inconsistent with, and contrary to, the terms and conditions of this Addendum and the Master Agreement through a Contract or other document is null and void and hereby rejected. The terms and conditions of this Addendum and the Master Agreement prevail and govern in case of any attempted modifications or inconsistent terms.

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

Participating Entity:	Contractor:
-----------------------	-------------

Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Tara Larwick
Telephone:	720.551.9530
Email:	tlarwick@naspovaluepoint.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate databases.]

Exhibit B to NASPO ValuePoint Master Agreement

Description of Services

GENERAL SERVICES FOR PARTICIPATING STATES: Contractor shall provide the following Services:

1.1 General Travel Management:

- 1.1.1 Comply with the Participating States'/Entities' travel policies, when booking travel for Travelers. Policies are included in each Participating Addendum.
- 1.1.2 Communicate via email or the online reservation system any travel industry changes to each Participating Entity on a monthly basis or sooner if they are immediately affected.
- 1.1.3 Verify rates and schedules before Traveler's departure date for all tickets issued. In the event carriers reduce fares, or the Participating Entity has negotiated a lower rate, Contractor will search out affected tickets and reissue them at a lower rate but inclusive of all change related fees and costs.
- 1.1.4 If applicable per the Participating States'/Entities' Travel Policy, work with Participating Entities and Travelers to track frequent flyer or reward numbers if provided by the Traveler.
- 1.1.5 Void tickets within the 24-hour window if allowed by the airline policy, while following the requirements of the Airline Reporting Corporation (ARC).
- 1.1.6 Supporting contracts will be the first option(s) offered to Travelers, including acceptance of required forms of payment per each contract's terms and conditions.
- 1.1.7 Have the ability to hold travel reservations for 24 hours.

1.2 System Management:

1.2.1 Online Booking Tool

- a. Make available multiple booking tools that are fully supported and maintained for Participating States/Entities to choose from for use. Each booking tool must be industry-wide recognized, non-proprietary tool with access to the GDS fares as well as Southwest airlines and SWABIZ fares.
- b. Each tool allows real time search and booking 24/7 capabilities on any computer with internet access, phone and other mobile devices. With a 98% up time annually. Tools that allow booking via mobile app are Concur and Lightning only. In addition, Contractor will have the SMART Portal accessible from any device without an application download.
- c. At a minimum other function each booking tool must be available to do are: Allow booking air, car, rail and hotel, designate preferred carriers, incorporate GSA and preferred contract rates, allows internet fare search, allows profile maintenance,

personal and shared trip templates, is able to comply with each entities travel policy's, able to have a hierarchy system for travel arrangers and approvers, and tracks and can assist in lowering travel costs.

- d. Offer customized applications for approval and advanced planning. Participating Entities can customize workflows to meet their needs.
- e. The Booking tool must be configurable to show Participating Entities contracted rates for other travel services if applicable.
- f. Rental car and lodging rates must be identified on each booking tool, if the rates are a NASPO ValuePoint contracted rate, or if a Participating State/Entity has a contracted rate that needs to be considered first. If Participating State/Entity only wants contracted rates showing that will be in the Participating Addendum.
- g. Permit one-way, round trip, multi-segments, cloning, and multi-traveler reservations.
- h. Each tool must be on a secure website, password protected and contain a payment authorization system.
- i. Give the Participating States/Entities the ability to create unique passwords and set up new Travelers within their organization's hierarchy including Travelers.
- j. The ability to have travel arrangers within the Participating States/Entities book travel on the Travelers behalf.

- **Maintenance of Traveler Profiles**

- a. Shall be available to assist Participating States/Entities with routine cleanup and audit of profiled travelers.
- b. Approved Participating State/Entity Travel arrangers must be able to edit and maintain a Travelers profile as needed via online or by calling the Contractor.
- c. Have the ability to clone Travelers trips.

- **Travel Related Reservations**

- a. Have the ability to cancel and modify existing reservations.
- b. Have the ability to book, car, lodging, rail, airline, and other travel related services separately or together.
- c. Have the ability to modify travel reservations.

1.3 Customer and Agent Services:

13.1 Participating State/Entity Support

- a. Provide travel agents to arrange reservations and issue tickets for airline, and rail along with reservations for vehicle and lodging. These services include domestic and international travel.
- b. Offer to Participating States/Entities the lowest available rates on travel and the lowest logistical available airfare. If the Participating State/Entity has a separate contract for air fare rates or other travel related services, these rates must be offered to the Participating State/Entity first if the schedule fits the traveler's needs.
- c. Answer phone calls 90% of the time within 20 seconds. The abandon rate shall be less than 3%.
- d. Provide a toll-free nation-wide reservation number for Participating States/Entities to call 24/7 at no additional cost.
- e. Have staff available via these outlets 24/7: email, phone support and assistance through a click to dial mobile application (when available). Contractor's staff assisting must be staff of the Contractor, not a third party including after hours.
- d. Customer Service shall be provided for all Participating Entities during the hours of 8:00 am to 5:00 pm, time zone to be per the Participating States/Entities time zone. After hours agents shall be available 24 x 7 x 365 and have access to all of the Participating States/Entities, Traveler information and be able to assist with and book travel. After hours staff must be part of Contractor, not a third party.
- e. Ensure travel options delivered under the agent assisted transaction fee are identical to those obtained by a Participating State/Entity via the online reservation system.
- f. Book preferred seating and other requests for the Traveler, per the Participating State's/Entity's travel policy. The Traveler's preferences are identified in his or her profile.
- g. Provide continuous low fare search through Global Distribution System (GDS) for both online and agent-assisted reservations.
- h. Include confirmation numbers and other pertinent reservation data on the Traveler's itinerary.
- i. Notify Travelers via email, phone or text message confirmation of any itinerary changes in flight, rail, or other travel schedules as soon as Contractor receives the information from the travel supplier, in no event longer than one hour from Contractor's receipt of the information. Any tickets, itineraries, and billings shall be modified or reissued to reflect changes, as necessary. Contractor will make adjustments for any airline schedule changes in travel, unless the airline makes the change at the airport due to a travel issue during travel.
- j. If a flight is sold out at the time of booking, the Traveler can be placed on a waitlist for that flight. If a seat becomes open the Travelers is placed on that flight. This applies

to non-discounted or lowest cost flights only. Communication to the Travelers via phone, mobile device or email from Contractor.

k. Investigate any service complaints received and provide a response within 48 hours to the Participating State/Entity or Purchasing Entity.

1.4 Lodging Services:

1.4.1 Have a system to manage hotel negotiations, add properties during the year, and conduct annual RFPs to offer NASPO ValuePoint members.

1.4.2 Ensure each hotel includes at a minimum these features and is posted on a separate page or pop-up window for Travelers to review at the time of booking:

- Offer and have available GSA rates or lower for travelers
- Restaurant on-site or nearby
 - Hotel Location
- Airport shuttle service If available and if there is a fee or free service.
- Continental or full breakfast included in the room rate
- Fitness Center
- Internet services, at no cost is preferred.
- Business center
- Meeting Rooms available
- No blackout dates
- Last room available
- Environmentally preferable

1.4.3 Additional information and Rates to include:

1.4.3.1 Rates and other hotel information

- GSA Per-diem information and rates showing in each booking tool as the first option for Travelers.
- Seasonal per-diem rates and period's (if applicable)
- Year round per-diem rates (if applicable)
- Flexible rates or discounted rates for local hotel/motel tax and last room availability.

1.4.3.2 Meeting Rooms:

- Number of meeting and conference rooms
- Total square footage of meeting rooms including how many seats can be in each room.
- Number of board rooms and square footage
- List if audio visual equipment available

- Are catering services available
- If wireless internet is available or not in the meeting rooms

1.4.3.3 Additional Information:

Assist in streamlining the payment process to each hotel. This includes using technology like virtual payment solutions, SMART Bill, and direct bill as needed.

1.5 Website:

1.5.1 Customized Website

Each Participating State/Entity will have a customized website including their travel policy, and any other needed information for travelers. This also include a single sign on from the Participating State's/Entity's network domain to an individual level.

1.6 Additional Services:

1.6.1 Services

- Online Direct Connect: bookings done online with direct connect to airlines. Example: Southwest wanna get away fare.

1.6.2 Meeting and Conference Planning

- Assist Participating States/Entities or Purchasing Entities with group air bookings and assist in small meeting sourcing and hotel blocks.
- Offer the Event and Travel Management group as support to Participating State/Entities that need corporate services. Included are outsourced event engagements quoted per event and meeting service.

1.6.3 Automated Payment Management

Offer and support multiple expense tools to Participating States/Entities to choose from for expense management, with invoicing, expense reporting, and automated reimbursement included.

1.6.4 Mobile Technology

1.6.4.1 Mobile Device access

- a. Provide booking, and other relevant travel information via a mobile application examples include but are not limited to iPhone, android platforms. Other platforms or specific devices may be added by Participating States/Entities.

1.7 Reports:

1.7.1 Unused Tickets

- a. At the time of ticketing ensure credits are used toward new reservations and if the Traveler is booking online their profile will prompt them a credit is available. Carrier fees may apply to the Participating Entity with using these tickets.
- b. Upon request name changes and refunds when possible.
- c. Process the necessary paperwork and refund an unused refundable ticket less the transaction fee when the ticket is submitted for a refund. All refunds are credited back to the original credit card or other payment means originally used to pay for the ticket.

1.7.2 Other Reports

- a. Provide any reports requested by the Participating State's/Entity's Participating Addendum. If the format is not requested. This could include upon Traveler request, Contractor shall provide customized or other reports, such as: Hotel Activity report, Air activity report, Executive summary report, Emissions report, and Fare savings report Reports can be run and delivered via email on a customized schedule

1.8 Implementation Plan and Transition:

1.8.1 Work with the Participating State/Entity to create an implantation plan that includes but is not limited to:

- A kickoff meeting, setting milestones and timelines
- Service configuration
- Finance and accounting
- Technology
- Infrastructure
- Travel management
- Trainings
- Online booking tools
- Testing, review and approval by Participating Entity
- Go live

- a. Update the implementation plan as needed and tasks are completed.
- b. Assign a contact for the Participating State/Entity to work with and have progress meetings when needed.
- c. Submit the implementation plan to the Participating State/Entity for review.
- d. Once the plan is approved by the Participating State/Entity, move forward with the plan including dates agreed upon.

1.8.2 Re-Implementation

Assist the Participating State/Entity in making changes to their travel program if needed. Work with the Participating State/Entity to create a re-implementation plan to accomplish the changes.

1.8.3 Transition

Work with each Participating State/Entity or Purchasing Entity to create a Transition plan. Develop a transition plan for ease of implementation of subsequent contractors should the need arise at the end of the Contract term. Transition plan must be updated quarterly and be available upon request. The transition plan shall be agreed upon between the Participating State/Entity and Contractor.

Knowledge Transfer: Contractor shall play an integral role in providing knowledgeable human resources during any transitional period to ensure uninterrupted operations and availability of the Information System. Consultations with Expert Personnel are required in addition to supplied documentation.

Documentation: Documentation shall be made available to assist in the execution of any transition plan upon Contract termination or expiration. Contractor is responsible for developing and maintaining documentation at all times during the contract period. All documentation shall be made available to the Participating Entity upon request.

1.9 Program Management:

1.9.1 Annual Review Meetings

- a. Meet with the Agreement Contract Administrator annually to go over program performance.

1.9.2 Account Representative

- a. Provide a dedicated account manager(s) to support each Participating State/Entity. The account manager will be responsible for implementation, setting up the online travel reservation system, website, providing access and comprehensive reporting, benchmarking, conduct reviews, creating travel program seminars and trainings resolving client services and reservation issues with Participating Entities including Traveler issues.

1.10 Duty of Care and Incident Reporting:

1.10.1 Duty of Care

- a. Identify Travelers who may be in a high-risk location (security or natural disaster threat), have travel booked to a high-risk location, or may be requesting travel to a high risk location.

- b. Some of these services are include but no limited to:

- Global risk analysis, including pre-trip, while away, and post trip analysis.
- Traveler tracking and automated warnings and alerts
- Travel and risk policy development

- Designation-based training strategy
- IT Security and compliance testing
- Mobile messaging and connectivity
- Accommodation of Travelers special needs
- In-house 24/7 agent services
- Business continuity planning and testing
- Integration with third-party extraction providers

1.11 Training:

- a. Offer webinar, online, on-site, video, user guide and phone training to Participating States/Entities at its request. These trainings must highlight step-by step-on how to make a reservation from start to finish, highlight features and benefits of the booking tool and any other components the Participating State/Entity has requested.
- b. In addition to delivered reports, designated NASPO ValuePoint or Lead State site administrators will receive training on reporting tools so they can retrieve travel spend data whenever the need arises. All reports or other reporting tool reports can be formatted in PDF format, Excel, Rich Text, Word, as requested by the Traveler.

1.12 Emergency and Disaster Recovery:

- 1.12.1 Have multiple locations with back up servers, if one office is down another is able to assist, and customers won't see an interruption in services or access to their booking tool and profile.
- 1.12.2 In the event a disaster or failure happens work and communicate with the Participating State/Entity, traveler(s) and the Contract Administrator.
- 1.12.3 Deliver to DAS a copy of its Emergency and Disaster Recovery Plan and a copy of the Emergency and Disaster Recovery Plan for the Booking Tool, if separate, ensuring that all critical business needs are met in the event of an emergency or disaster and addressing the following:
 - Data facilities that exceed natural disaster code – including earthquakes and tornados
 - Fully redundant system, including server build outs, intelligent load balancing, and excess capacity configurations to ensure that failure of a single component does not disrupt the entire environment and ensures communications integrity, in the event one or multiple offices are taken offline
 - Redundant power, emergency systems, fire detection
 - Back up and restoration procedures for full recovery of the production environment – automated disk to disk and duplication of local disk array to a remote data center
 - Staffing plans
 - Communication plans
 - Pandemic Response procedures and communication plan
 - Mandatory recovery procedure review

Contractor shall maintain and update its Emergency and Disaster Recovery Plan as necessary. Contractor shall deliver copies of any updated or revised plans to DAS.

Exhibit C to NASPO ValuePoint Master Agreement

PROVISIONS REQUIRED BY FEDERAL LAW

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, 136), or other federal provisions, and without limiting the generality of Section 15 of the Master Agreement, Contractor shall comply and, as indicated, cause its subcontractors to comply with the following federal requirements. For purposes of this Master Agreement and all Requests for Services, all references to federal laws are references to federal laws and implementing administrative rules as they are adopted and amended from time to time.

1. **Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). The Executive Order prohibits contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.
2. **Clean Air, Clean Water, EPA Regulations.** Contractor shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC §7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 USC §§1251-1387), specifically including, but not limited to Section 508 (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to Participating Entity, Lead State, the federal funding agency, and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include, and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
 - 2.1. Contractor shall report each violation to Participating Entity and Lead State and understands that each will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.
 - 2.2. Contractor shall include these provisions in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.
3. **Solid Waste Disposal Act.** Contractor shall comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act.
4. **Resource Conservation and Recovery.** Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC §6901 et. seq.). Section 6002 of that act (codified at 42 USC §6962) requires that preference

be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

- 5. Energy Efficiency.** Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- 6. Truth in Lobbying.** By signing this Master Agreement, Contractor certifies, to the best of Contractor's knowledge and belief that:
 - 6.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, 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.
 - 6.2. 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, Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - 6.3. Contractor 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 and subcontractors shall certify and disclose accordingly.
 - 6.4. This certification is a material representation of fact upon which reliance was placed when this Master Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Master Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - 6.5. No part of any federal funds paid to Contractor under this Master Agreement may be used, other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government itself.
 - 6.6. No part of any federal funds paid to Contractor under this Master Agreement may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such

recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or executive order proposed or pending before the United States Congress or any state government, state legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local or tribal government in policymaking and administrative processes within the executive branch of that government.

- 6.7. The prohibitions in Subsections 6.5 and 6.6 of this section include any activity to advocate or promote any proposed, pending or future federal, state or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- 6.8. No part of any federal funds paid to Contractor under this Master Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under Section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation does not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
- 7. Recycled Materials.** In the performance of the Services, 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 performance schedule, (ii) meeting Master Agreement and Contract performance requirements, or (iii) at a reasonable price.
- 8. Drug Free Workplace.** Contractor shall comply with the Drug-free Workplace requirements in subpart b (or subpart c, if an individual) of 2 CFR subtitle B, Chapter XV, Part 1536, which adopts the governmentwide implementation (2 CFR Part 182) of sec. 5152-5158 of the Drug Free Workplace Act of 1988 (pub. L. 100-690, title v, subtitle d; 41 u.s.c. 701-707) . Contractor acknowledges:
- 8.1. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.
- 8.2. Violators may be terminated or requested to seek counseling from an approved rehabilitation service. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- 8.3. Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy of the State of Oregon that abuse of this drug will also not be tolerated in the workplace.
- 8.4. Contractor certifies that it will provide drug-free workplaces for its employees.
- 9. Audits; Access to Records.** Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in this Master Agreement and applicable state or federal law.

9.1. Contractor shall comply and cause its subcontractor to comply, to the extent applicable to Contractor or such subcontractor in connection with its performance of the Services under this Master Agreement, with the applicable audit requirements and responsibilities set forth in the Subpart F of [2 CFR part 200](#) (for audits for fiscal years beginning after December 26, 2014).

9.2. Records must be available as provided in Section 24 of the Master Agreement.

10. Debarment and Suspension. Contractor shall comply and shall cause its subcontractors to comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C and shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 2 CFR part 180 and 2 CFR Part 3000, principles as defined in 2 CFR 180.995 or its affiliates, as defined in 2 CFR 180.905.). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549 (excluded as defined in 2 CFR 180.940 or disqualified as defined in 2 CFR 180.935). Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor certifies:

10.1. Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

10.2. Contractor has not within a three-year period preceding the Effective Date of this Master Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

10.3. Contractor is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in subsection 1 of this certification; and

10.4. Contractor has not within a three-year period preceding the effective date of this Master Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

11. Americans with Disabilities Act. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC §12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work. This act (28 CFR Part 35, Title II, Subtitle A) prohibits

discrimination on the basis of disability in all services, programs, and activities provided to the public by state and local governments, except public transportation services.

- 12. Pro-Children Act.** Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC §6081 et. seq.).
- 13. Educational Records.** Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 USC §1232g; 34 CFR Part 99).
- 14. National Voter Registration Act.** Contractor shall comply with the agency-based voter registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities to be offered to applicants for public services.
- 15. Servicemembers Civil Relief Act.** Contractor shall comply with the Servicemembers Civil Relief Act (codified at 50 USC App. 501 et. seq.).
- 16. Miscellaneous Federal Provisions.** Contractor shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Master Agreement or to the delivery of Services. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Services: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, and (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Services and required by law to be so incorporated. No federal funds may be used to provide grant activities in violation of 42 USC 14402.
- 17. Whistleblower Protection Act.** Contractor shall comply with the requirements for whistleblower protections (as applicable) at 10 USC §2409, 10 USC §4712, 10 USC §2324, 41 USC §§4304- 4310.
- 18. US Patriot Act of 2001.** Contractor shall comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (US PATRIOT Act), which amends 18 USC §175-175c.
- 19. Rehabilitation Act of 1973.** Contractor shall comply with requirements of Section 503 and Section 504 of the Rehabilitation Act of 1973, 29 USC § 794, as amended.
- 20. Trafficking Victims Protection Act of 2000.** Contractor shall comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking of Victims Protection Act of 2000 (TVA), as amended by 22 USC §7104.

- 21. Age Discrimination Act.** Contractor shall comply with the requirements of the Age Discrimination Act of 1975 (Title 42 USC. §6101 et. seq.).
- 22. Buy American and Hire American.** Contractor shall comply with any applicable provisions of the Buy American Act (41 USC §§83-1-8305 and any other applicable statutes, regulations or rules that require, or provide a preference for, the purchase or acquisition of goods, products, or material produced in the United States.
- 23. Use of Logos.** 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.
- 24. False Statements.** Contractor acknowledges that 31 USC Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Master Agreement and all Contracts.
- 25. General Provisions.** The federal government is not a party to this Master Agreement or any Contract and is not subject to any obligations or liabilities to Participating Entity, Lead State, Contractor or any other party pertaining to any matter resulting from the Contract.

Exhibit D

Security Requirements and Rider to Terms of Service

1. **Applicability.** This Exhibit D applies to Contractor's collection, creation, storage, transmission, and use of Purchasing Entity Data, including through online, on-premises, or mobile software and services. The specifically includes the [third party] [name of product] of [name and title of software publisher] that Contractor offers to Purchasing Entities and their Travelers to receive Services, including related intellectual property (such as documentation) and support to be provided as a service by [Contractor/Licensors].
2. **Agreement and Interpretation.** This exhibit supersedes any provision to the contrary in any terms and conditions for online, on-premises, or mobile software and services products that Contractor offers to Purchasing Entities and their Travelers, including the Terms of Service (TOS) which are attached to this Exhibit D as Exhibit D-1.
 - 2.1. In the event of any conflict between a Participating Addendum (including as amended), the Master Agreement (including this exhibit and as amended), the TOS, updates to the TOS published by Licensors on or after the effective date of the Master Agreement or applicable Participating Addendum (including updates to any policy referenced in the TOS), and any other terms presented to an end user in a 'click wrap' 'click through' or similar end user agreement, the conflict will be resolved in that order.
3. **Ownership of Purchasing Entity Data.** Any information Contractor or its employees or agents receives or creates relating to a Purchasing Entity or its Travelers (Purchasing Entity Data) is owned by Purchasing Entity. Purchasing Entity hereby grants Contractor a license to use Purchasing Entity Data to fulfill the purposes of the Contract, and otherwise only as specifically described in the Contract. Contractor hereby irrevocably assigns, transfers and conveys, and will cause its employees, subcontractors and agents to assign, transfer and convey without further consideration all right, title, and interest in Purchasing Entity Data to Purchasing Entity. Upon request by Purchasing Entity, Contractor will or will cause the execution and delivery of any documents that may be necessary to preserve, or enable Purchasing Entity to enforce, its rights with respect to Purchasing Entity Data.
4. **Privacy and Security Training.** Contractor shall ensure its employees, agents, and contractors receive periodic training on privacy and security obligations relating to the Services.
5. **Limited Purposes.** Contractor shall limit the use or disclosure of Purchasing Entity Data to persons directly connected with the administration of the Services.
6. **Prohibition on Data Mining.** Contractor shall not capture, maintain, scan, index, share or use Purchasing Entity Data, or otherwise use any data-mining technology, for any non-authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, "non-authorized activity" means data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Agreement.

- 7. Privacy Protections.** Purchasing Entity Data may include information subject to specific confidentiality protections under state or federal law, and the implementing regulations of those laws. Contractor, its employees, agents, and contractors shall comply with laws and regulations applicable to the information, including as those laws and regulations may be updated from time to time. Contractor shall maintain protections required by law or a Contract for any retained Purchasing Entity Data for so long as Contractor (including through any third party) retains it.
- 8. Access.** Contractor shall not suspend or allow the suspension of a Purchasing Entity's access to its data at any time during the term of the applicable Participating Addendum or the post-termination access period.
- 9. Post-Termination Access to Purchasing Data.** Upon termination (including by expiration) of the Master Agreement or a Participating Addendum, Contractor shall, at Lead State's discretion, either return all affected Purchasing Entity Data to the applicable Purchasing Entity (or delegate, including under any transition plan agreed upon under the Master Agreement) in an agreed-upon format, or ensure each affected Purchasing Entity has access and the ability to retrieve its data for at least a 90 calendar day period following termination. This 90 day period will be at no additional charge to any Purchasing Entity. Contractor shall not retain any copies of Purchasing Entity Data following its written verification that it no longer requires post-termination access, except as necessary for audit verification purposes.
- 10. Sanitization.** Subject to Contractor's record retention obligations under this Master Agreement or the applicable Participating Addendum, Contractor shall not retain any copies of Purchasing Entity Data following the post-termination access period referenced in Section 9 of this exhibit without the Purchasing Entity's written authorization. Contractor shall notify Lead State and each applicable Participating Entity of any conditions that make returning all Purchasing Entity Data not feasible. Upon Purchasing Entity's written acknowledgement that returning all Purchasing Entity Data is not feasible and its consent, Contractor shall purge or destroy retained Purchasing Entity Data in all its forms (including copies of returned data, and data held by third parties) in accordance with the most current version of NIST SP 800-88 (or other agreed-upon standard) and provide Purchasing Entity with written certification of sanitization.
- 11. Notifications.**

 - 11.1. Security Incidents, Breaches and Potential Breaches.** In the event Contractor or its subcontractor or agents discover or are notified of a security incident, or a breach or potential breach of security or privacy that actually or potentially impacts the Services or Purchasing Entity Data, Contractor shall notify Lead State and each affected or potentially affected Participating Entity and Purchasing Entity of the security incident, breach, or potential breach immediately, and in no event more than 24 hours following discovery or notification. Breaches include a failure to comply with Contractor's confidentiality obligations. If Purchasing Entity determines that a breach requires notification of impacted individuals, or other notification required by law, such

Purchasing Entity will have sole control over the notification content, timing, and method, subject to Licensor's obligations under applicable law.

- 11.2. **Requests for Purchasing Entity Data.** In the event Contractor receives a third party request for Purchasing Entity Data, including any electronic discovery, litigation hold, or discovery searches, Contractor shall first give Purchasing Entity notice and provide such information as may reasonably be necessary to enable Licensee to take action to protect its interests.

12. Security and Hosting.

- 12.1. **Compliance with Laws, Regulations, and Policies.** Contractor and its employees, contractors, and agents shall comply with all applicable state and federal laws and regulations, and Purchasing Entity policies governing use and disclosure of Purchasing Entity Data including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:
- 12.1.1. Current Payment Card Industry Data Security Standards (PCI DSS).
 - 12.1.2. Compliance with at least NIST 800-53 "Moderate" security controls (National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53).
 - 12.1.3. For Lead State, the Oregon Consumer Information Protection Act (OCIPA), ORS 646A.600 through 646A.628.
- 12.2. **Privacy and Security Measures.** Contractor represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security, and privacy of Purchasing Entity Data. Contractor shall monitor, periodically assess, and update its physical, technical, and logical security controls and risk to ensure continued effectiveness of those controls.
- 12.3. **Security Risk Management Plan.** Contractor shall ensure the level of security and privacy protection required for the Services is documented in a security risk management plan. Contractor will make its plan available to Lead State for review upon request.
- 12.4. **Hosting Services.** Services are provided via hosting services located within the continental United States. Contractor shall not transfer or materially modify these hosting services without advance written consent from Lead State.
- 12.5. **Third Party Audit.** Contractor shall ensure it and its subservice organizations undergo annual examination from an independent auditor to assess the Services' compliance with at least NIST 800-53 "Moderate" security controls (National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53). Contractor shall provide an exact copy of the most recent examination results report to Lead State upon request.
- 12.6. **Security Logs and Reports.** Contractor shall allow Purchasing Entity access to security logs that affect the Services or Purchasing Entity Data. This includes the ability

for Purchasing Entity to request a report of the records that a specific user accessed over a specified period of time.

Exhibit D-1
Licensor Terms of Service (TOS)

ATTACHMENT B — DISCLOSURE EXEMPTION AFFIDAVIT

_____ (Affiant), being first duly sworn under oath, and representing [insert Proposer Name] (hereafter “Proposer”), hereby deposes and swears or affirms under penalty of perjury that:

1. I am an employee of the Proposer, I have knowledge of the Request for Proposals referenced herein, and I have full authority from the Proposer to submit this affidavit and accept the responsibilities stated herein.
2. I am aware that the Proposer has submitted a Proposal, dated on or about January 25, 2022 (the “Proposal”), to the State of Oregon (State) in response to Request for Proposals S-10700-00001827, for Travel Management Services, and I am familiar with the contents of the RFP and Proposal.
3. I have read and am familiar with the provisions of Oregon’s Public Records Law, Oregon Revised Statutes (“ORS”) 192.311 through 192.478, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.
4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the “Exempt Information”), which is incorporated herein by this reference. It is my opinion that the Exempt Information is exempt from disclosure under Oregon’s Public Records Law under the specifically designated sections as set forth in Exhibit A or constitutes “Trade Secrets” under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:
 - A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
 - i. is not patented,
 - ii. is known only to certain individuals within the Proposer’s organization and that is used in a business the Proposer conducts,
 - iii. has actual or potential commercial value, and
 - iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.
 - or
 - B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

- i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- ii. Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.

5. I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

Affiant's Signature

State of _____)

) ss:

County of _____)

Signed and sworn to before me on _____ (date) by _____ (Affiant's name).

Notary Public for the State of _____

My Commission Expires: _____

EXHIBIT A TO ATTACHMENT B

Proposer identifies the following information as exempt from public disclosure under the following designated exemption(s):

ATTACHMENT C — PROPOSER INFORMATION AND CERTIFICATION SHEET

Legal Name of Proposer: _____

Address: _____ City, State, Zip: _____

State of Incorporation: _____ Entity Type: _____

Contact Name: _____ Telephone: _____ Email: _____

Oregon Business Registry Number (if required): _____

Any individual signing below hereby certifies they are an authorized representative of Proposer and that:

1. Proposer understands and accepts the requirements of this RFP. By submitting a Proposal, Proposer agrees to be bound by the Master Agreement terms and conditions in Attachment A and as modified by any Addenda, except for those terms and conditions that DAS has reserved for negotiation, as identified in the RFP.
2. Proposer acknowledges receipt of any and all Addenda to this RFP.
3. Proposal is a Firm Offer for 180 days following the Closing.
4. If awarded a Master Agreement, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work of the Master Agreement.
5. I have knowledge regarding Proposer's payment of taxes and by signing below I hereby certify that, to the best of my knowledge, Proposer is not in violation of any tax laws of the state or a political subdivision of the state, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
6. Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Proposer does not discriminate against any business certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. If applicable, Proposer has, or will have prior to contract execution, a written policy and practice, that meets the requirements described in ORS 279A.112 (formerly HB 3060), of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class. DAS may not enter into a contract with an anticipated contract price of \$150,000 or more with a Proposer that does not certify it has such a policy and practice. See <https://www.oregon.gov/DAS/Procurement/Pages/hb3060.aspx> for additional information and sample policy template.
7. Proposer complies with ORS 652.220 and does not unlawfully discriminate against any of Proposer's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

Contractor's continuing compliance constitutes a material element of this Master Agreement and a failure to comply constitutes a breach that entitles DAS to terminate this Master Agreement for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

8. Proposer is not engaged in the provision of broadband Internet access service, or if at any time Proposer is engaged in or may engage in the provision of broadband Internet access service Proposer is in compliance with Oregon Laws 2018, Chapter 88 (HB 4155) and applicable Public Utility Commission rules, and will remain in compliance throughout the term of the Contract.
9. Proposer and Proposer's employees, agents, and subcontractors are not included on:
 - A. the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or
 - B. the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/portal/>
10. Proposer certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Proposer, its employees, or its agents, on the one hand, and the business or economic interests of the State, on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. If any changes occur with respect to Proposer's status regarding conflict of interest, Proposer shall promptly notify the State in writing.
11. Proposer certifies that all contents of the Proposal (including any other forms or documentation, if required under this RFP) and this Proposal Certification Sheet are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
12. Proposer understands that any statement or representation it makes, in response to this RFP, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, made under Master Agreement being a "false claim" {ORS 180.750(2)} subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.
13. Proposer acknowledges these certifications are in addition to any certifications required in the Master Agreement and Statement of Work in Attachment A at the time of Master Agreement execution.

Authorized Signature

Date

(Printed Name and Title)

ATTACHMENT D - REFERENCE CHECK FORM

Proposer Name: _____

Reference Entity: _____

Reference Contact Name: _____

Contact Telephone Number: _____

Contact Email Address: _____

Please rate the following questions on a scale of 0-10:

0 = Not satisfied 5 = Moderately satisfied 10 = Extremely satisfied.

1. How would you rate the Proposer's ability to deliver travel management services and the overall quality of services provided?

Score: _____

Comments: _____

2. How would you rate your overall satisfaction of the business relationship with the Proposer?

Score: _____

Comments: _____

3. How would you rate the Proposer's responsiveness to customer service issues and special requests (e.g., reported problems, changes billing, etc.)?

Score: _____

Comments: _____

ATTACHMENT E –CERTIFIED DISADVANTAGED BUSINESS OUTREACH PLAN

Proposer Name: _____ Date: _____

Contact Name: _____ Telephone: _____ Email: _____

“Certified Firm” means a small business certified under ORS 200.055 by the Oregon Certification Office for Business Inclusion and Diversity (COBID) as minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, and emerging small businesses.

Certified Firms must have an equal opportunity to participate in the performance of contracts financed with state funds. By submitting its offer, Proposer certifies that it has taken, and if there are further opportunities, will take reasonable steps to ensure that Certified Firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts resulting from this procurement.

The information submitted in response to this clause will not be considered in any scored evaluation.

1. Is Proposer an Oregon certified firm? Yes ☐ No ☐

If yes, indicate all certification type(s): DBE ☐ MBE ☐ WBE ☐ SDV ☐ ESB ☐ and supply

Oregon State Certification Number: _____

2. Include a list of Certified Firms that Proposer has had a contractual relationship with within the last two years.

3. Include a list of firms that Proposer has had a contractual relationship with within the last two years that are not Certified Firms but may be minority-owned, woman-owned, service-disabled veteran-owned or emerging small businesses.

4. Does Proposer foresee any subcontracting opportunities for this procurement? Yes ☐ No ☐

If no, do not complete the rest of this form and submit this first page with your Proposal.

If yes, please complete the following pages and submit all pages with your Proposal.

CERTIFIED DISADVANTAGED BUSINESS OUTREACH PLAN

5. Describe the steps Proposer will take to solicit Certified Firms for subcontracting opportunities if awarded a contract from this procurement.

6. Describe the subcontracting opportunities and the approximate dollar value of each that may be available, if awarded a Contract.

7. Would Proposer be willing to report the identity of each subcontractor and the value of each subcontract to COBID if awarded a Contract from this procurement?

ATTACHMENT F - RESPONSIBILITY INQUIRY

DAS will determine responsibility of a Proposer prior to award and execution of a Master Agreement. In addition to this form, DAS may notify Proposer of other documentation required, which may include but is not limited to recent profit-and-loss history, current balance statements and cash flow information, assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims, availability of short and long-term financing, bonding capacity, insurability, credit information, materials and equipment, facility capabilities, personnel information, record of performance under previous contracts, etc. Failure to promptly provide requested information or clearly demonstrate responsibility may result in an DAS finding of non-responsibility and rejection.

1. Does Proposer have available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of Proposer to meet all contractual responsibilities? **YES** ☐ / **NO** ☐.
2. Within the last five years, how many contracts of a similar nature has Proposer completed that, to the extent that the costs associated with and time available to perform the contract remained within Proposer's control, Proposer stayed within the time and budget allotted, and there were no contract claims by any party? Number: ____

How many contracts did not meet those standards? Number: ____ If any, please explain.

Response:

3. Within the last three years has Proposer (incl. a partner or shareholder owning 10% or more of Proposer's firm) or a major subcontractor (receiving 10% or more of a total contract amount) been criminally or civilly charged, indicted or convicted in connection with:
 - obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract,
 - violation of federal or state antitrust statutes relating to the submission of bids or Proposals, or
 - embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property? **YES** ☐ / **NO** ☐.

If "YES," indicate the jurisdiction, date of indictment, charge or judgment, and names and summary of charges in the response field below.

Response:

4. Within the last three years, has Proposer had:
 - any contracts terminated for default by any government DAS, or
 - any lawsuits filed against it by creditors or involving contract disputes? **YES** ☐ / **NO** ☐.

If "YES," please explain. (With regard to judgments, include jurisdiction and date of final judgment or dismissal.)

Response:

5. Does Proposer have any outstanding or pending judgments against it? **YES** ☐ / **NO** ☐.

Is Proposer experiencing financial distress or having difficulty securing financing? **YES** ☐ / **NO** ☐.

Does Proposer have sufficient cash flow to fund day-to-day operations throughout the proposed contract period? **YES** ☐ / **NO** ☐

If "YES" on the first question or second question, or "NO" on the third question, please provide additional details.

Response:

6. Within the last three years, has Proposer filed a bankruptcy action, filed for reorganization, made a general assignment of assets for the benefit of creditors, or had an action for insolvency instituted against it? **YES** ☐ / **NO** ☐.

If "YES," indicate the filing dates, jurisdictions, type of action, ultimate resolution, and dates of judgment or dismissal, if applicable.

Response:

7. Does Proposer have all required licenses, insurance and/or registrations, if any, and is Proposer legally authorized to do business in the State of Oregon? **YES** ☐ / **NO** ☐.

If "NO," please explain.

Response:

8. Pay Equity Certificate. This certificate is required if Proposer employs 50 or more full-time workers and the prospective contract price is estimated to exceed \$500,000. [This requirement does not apply to architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services contracts.] Does a current authorized representative of Proposer possess an unexpired Pay Equity Certificate issued by the Department of Administrative Services? **YES** ☐ / **NO** ☐ / **N/A** ☐. [If the certificate was provided with the Bid or Proposal submitted for a solicitation related to the prospective contract, then it is not necessary to resubmit it. Just indicate "see Bid" or "see Proposal" in the response field. **Otherwise, if applicable, submit a copy of the certificate with this form.**]

Response:

AUTHORIZED SIGNATURE

By signature below, the undersigned Authorized Representative on behalf of Proposer certifies to the best of his or her knowledge and belief that the responses provided on this form are complete, accurate, and not misleading.

Proposer Name:

RFP:

	Project Name:
--	---------------

Authorized Signature

Date

Print Name

Title

ATTACHMENT G
AMENDMENT 2 STATE SPECIFIC TERMS AND CONDITIONS

State of Oregon Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

For purposes of clarity, Proposers should note Oregon law requires the preferences removed from RFP Section 4.13.5, cited here for reference, apply to Oregon's Participating Addendum:

4.13.5. PREFERENCES

4.13.5.1 Reciprocal Preference

For evaluation purposes per OAR 125-246-0310, DAS shall add a percent increase to each out-of-state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Proposer in the [Proposer's state](#).

4.13.5.2 Recycled Materials

Agency will give preference to Proposers offering products manufactured using Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price according to any applicable reciprocal preference.

4.13.5.3 Tiebreakers

Oregon Supplies: If DAS receives Proposals identical in price, fitness, availability and quality and chooses to award a Master Agreement, DAS shall award the Master Agreement in accordance with the procedures outlined in OAR 125-246-0300

1. Incorporation of Master Agreement. Participating Entity and Purchasing Entities are entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under the Master Agreement and this Addendum, subject to the State-Specific Constitutional, Statutory and other requirements set forth in this Addendum.

2. Definitions. Capitalized terms not defined in this Addendum have the meaning described to them in the Master Agreement. The following terms have the meanings set forth below and apply to Services delivered under Requests for Services under this Addendum:

“ORCPP” means the Oregon Cooperative Purchasing Program. ORCPP members include agencies and organizations within the State of Oregon that are authorized to purchase the Services available under a price agreement or master agreement entered into by the State.

3. Requests for Services

3.1 Eligibility to Request Services and Enter into Contracts. All state agencies under DAS PS procurement authority and all state agencies with their own procurement authority, institutions of higher institution, political subdivisions and other entities that are members of the Oregon Cooperative Purchasing Program (ORCPP), are eligible to acquire Services under this Addendum.

3.2 Verification of Purchasing Entities. Contractor shall verify that it provides Services under this Addendum only to eligible Purchasing Entities. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the OregonBuys eProcurement system at <https://oregonbuys.gov/bso/>.

4. Payment Provisions; Expenses. All payments are subject to ORS 293.462. Purchasing Entity will not be obligated to pay any travel expenses unless expressly agreed upon in a Contract. Any obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations set under Oregon law. Contracts with the State of Oregon are subject to the rates and limitations of the Statewide Travel Policy, currently found online at:
<http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

5. Funds available and authorized/non-appropriation. The State’s and its agencies’ payment obligations under this Addendum are conditioned upon the Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Request for Services issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Request for Services from any part of Oregon state government other than the Purchasing Entity that made the Request for Services. Nothing in this Addendum or Request for Services is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Request for Services issued under this Addendum.

6. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF). Contractor shall submit volume sales reports and pay the administrative fee as set forth in Exhibit No. 4.

7. Dispute Resolution. Any dispute between the parties under this Addendum that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes. Neither party waives its right to a jury trial or right to participate in class, collective, or representative claims.

8. Control of Defense and Settlement. Contractor's obligation to indemnify Purchasing Entity as set forth in the Master Agreement is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware. Contractor shall have control of the defense and settlement of any claim that is subject to indemnification; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Purchasing Entity of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

9. Limitation of Liability. Participating Entity's or a Purchasing Entity's liabilities and any indemnification obligations to Contractor are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

10. Insurance. Within ten (10) business days of the Effective Date, Contractor shall deliver to DAS PS a certificate evidencing the insurance coverage set forth in the Master Agreement. No Request for Services may be placed or accepted until proof is provided that these requirements have been met. Purchasing Entities may request additional insurance coverage, as necessary.

11. Jurisdiction and Venue.

11.1 Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Request for Services under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District

Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.

11.2 Any Claim (as defined above) between Contractor and an Purchasing Entity other than the State of Oregon or a State agency that arise from or are related to an individual Request for Services or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Purchasing Entity resides or has its principal office, or at Purchasing Entity's option, within such other county as Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

12. Remedies. If any Services furnished by Contractor are, in Contractor's opinion, likely to become the subject of a third party claim for infringement of an intellectual property right, or if an Purchasing Entity is prevented from exercising its rights under this Addendum based on any infringement claim or court order arising from any infringement claim, then Contractor may, at its option and expense, procure for Purchasing Entity the right to continue using the allegedly infringing Services, or replace or modify the Services so that they become non-infringing; provided that the replacement or modified Services meets the specifications set forth in the applicable Request for Services to the satisfaction of the Purchasing Entity. If the foregoing remedies are not available, then Purchasing Entity will terminate the allegedly infringing Services, and Contractor will refund Purchasing Entity's payments, in full, for the allegedly infringing Services.

13. Term and Termination of Participating Addendum.

13.1 Term. This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

13.2 Termination. In addition to its termination rights under the Master Agreement, DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) calendar days prior written notice to Contractor.

13.3 Termination of Individual Contracts. In addition to its termination rights under the Master Agreement, Purchasing Entity may, at its sole discretion, in whole or in part, upon 30 calendar days written notice to

Contractor, or Purchasing Entity and Contractor may agree to terminate a Contract at any time by written consent.

14. Governing Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Addendum and resulting Requests for Services, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

15. Compliance with Law.

15.1 General. In addition to the compliance of law provisions of the Master Agreement, Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to Contractor or to the Goods or Services ordered under this Addendum or any Request for Services. Further, a Purchasing Entity's performance under a Request for Services is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270.

15.2 Pay Equity. Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Addendum and a failure to comply constitutes a breach that entitles DAS PS or Purchasing Entity to terminate this Addendum or a Request for Services for cause.

15.2.1 Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

15.3 False Claims. Contractor understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Addendum, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Addendum or any Contract, including but not limited to Contractor invoices, correspondence, reports, or other deliverables.

15.4 Non-Discrimination. Contractor certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a

material condition, to maintain such policy and practice in force during the term of this Addendum and each Request for Services.

15.5 Tax Compliance. Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318; Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

15.5.1 Any violation of this section constitutes a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DAS PS or Purchasing Entity, as applicable, to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

1. Termination of this Addendum or the applicable Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Purchasing Entity's setoff right, without penalty; and
3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services.

15.5.2 These remedies are cumulative to the extent the remedies are not inconsistent, and DAS PS or Purchasing Entity may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

15.5.3 18.6 This Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes and debt due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under any Contract under this Addendum entered into by a Purchasing Entity subject to

DAS PS' authority, or (ii) exercising a right of setoff against Contractor's compensation relating to this Addendum for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

15.6 Compliance with Executive Order 21-29. Contractor shall comply with State of Oregon Executive Order 21-29 (EO 21-29), COVID-19 Vaccination Requirement for State Executive Branch.

15.6.1 Definitions. The following definitions are provided for this certification:

1. "EO 21-29" means Governor of the State of Oregon's Executive Order 21-29, including as may be amended: https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf.
2. "FAQ" means [the Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions, including as may be amended: Executive Order 21-29 ContractorFAQ.pdf \(oregon.gov\)](#).
3. ["Executive Branch," "COVID-19," "Fully Vaccinated," "Proof of Vaccination," "Employee," and "Worker" have the meanings defined in EO 21-29.](#)
4. ["Worksite" has the meaning](#) defined in the FAQ.

15.6.2 Contractor certifies that for the term of the Addendum and each Contract entered into under this Addendum, or the duration of EO-21-29, whichever expires or terminates first, each Worker who provides goods or services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies.

15.6.3 Contractor shall maintain documentation of its compliance with EO 21-29 and provide written certification of its compliance with EO 21-29 on request of the State.

15.6.4 Contractor's compliance with this 15.6 is a material term of this Addendum, and Contractor's failure to comply constitutes a breach entitling DAS PS to terminate this Addendum for cause.

15.7 Application of Public Records Law. Participating Entity or Purchasing Entity's obligations of confidentiality, if any, are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.311 to 192.478, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475.

15.8 Recycled Products. To the maximum extent economically feasible in the performance of this Addendum or any Request for Services, Contractor will use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

15.9 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that department relative to the Addendum or any Request for

Services. A Purchasing Entity may withhold final payment under a Request for Services until Contractor has provided the Oregon Department of Revenue with the required information.

15.10 Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Purchasing Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity in any way. Contractor is not an "officer", "employee", or "agent" of Purchasing Entity (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

15.11 Access to Records. Contractor will maintain all fiscal records relating to Requests for Services in accordance with generally accepted accounting principles and will maintain any other records relating to Requests for Services in such a manner as to clearly document Contractor's performance thereunder. The Purchasing Entity, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Purchasing Entities. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

15.12 Severability. If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.

15.13 Survival. Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.

15.14 Amendments. The parties may amend this Addendum to modify selected terms, conditions, and price(s). This Addendum maybe modified by written document only.

Exhibit No. 3

CONTRACTOR TAX INFORMATION

Contractor Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): _____

Street
address: _____

City, state,
zip code: _____

Email
address: _____

Telephone: _____ () _____ Fax: _____ () _____

Contractor's taxpayer identification numbers;

Federal Tax Number _____ Oregon Tax Number _____

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): ☐ YES ☐ NO

Business Designation: (Check one box):

☐ Professional Corporation

☐ Limited Partnership

☐ Limited Liability Company

☐ Corporation

☐ Sole Proprietorship

☐ Partnership

☐ Nonprofit Corporation

☐

☐ Limited Liability Partnership

☐ Other

EXHIBIT NO. 4

VENDOR COLLECTED ADMINISTRATIVE FEE (VCAF)/VOLUME SALES REPORT (VSR)

1) Volume Sales Reports (VSRs). Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>. Contractor shall submit a Volume Sales Report (VSR) to DAS PS on a quarterly basis. The quarterly report is due no later than thirty (30) calendar days from the end of the quarter. Quarters end March 31, June 30, September 30 and December 31. Upon written notice from DAS PS, Contractor shall submit the VSR on a monthly basis no later than five (5) business days from the end of the preceding month, as directed by DAS PS.

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating ***“No Sales for the Reporting Period”***.

2) Vendor Collected Administrative Fee (VCAF). Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee (VCAF), as directed by DAS PS. The VCAF is a charge equal to Two Percent (2.0%) of Contractor’s Gross total sales, less any credits, made to Purchasing Entities during the reporting period.

Contractor may not reflect the VCAF fee as a separate line item charge to Purchasing Entities. Contractor’s prices must reflect all Contractor’s charges to Purchasing Entities.

Contractor is responsible for timely payment of the VCAF, regardless of entity that actually reports or makes VCAF payment to DAS PS. The form of payment must be specifically approved by the Contract Administrator. Late payments from Contractor will accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall

have been paid in full.

Audit. DAS PS may, upon reasonable request during regular business hours, by itself or by a person authorized by it, audit Contractor's records and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest. If the audit reveals that an underpayment exists, Contractor shall pay the cost of the audit.

3) Sample Report.

Fields		Data									
Price Agreement Number				General instructions: VCAF Rate/Structure is determined by your contract.							
Vendor Name											
Reporting Period		Period X									
VCAF Rate or Structure											
Form of e-Payment (Debit /Credit)											
Type of Report (Original, Corrective)		Original									
Vendor/Contact E-mail											
Vendor/Contact Phone											
PO #	Customer Name	Authorized Purchaser	Type of Commodity	Quantity of Items Sold	Unit Cost	Total Value of Line Item	Enter VCAF Amount	Invoice Number	Date of Sale		
						Total VCAF Fee to OR	0.00				

State of New Mexico Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

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.

D. Retainage.
Reserved

E. Performance Bond.
Reserved

2. 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, if the State Purchasing Agent has signed this Agreement, 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.

3. 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.

4. 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.

5. 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.

6. 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.

7.

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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXXX

18. Succession:

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

19. 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.

20. 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.

21. 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.

22. 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.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows:

<u>Quarter:</u>	<u>Period End:</u>	<u>Report Due:</u>
First	September 30	October 31
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the "State Purchasing Division." This contract number ##-00000-##-#### must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:

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

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

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

State of Montana Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

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.L. 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.L. 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.

State of Arizona Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

In accordance with Arizona Revised Statute (A.R.S.) §41-2632 and Arizona Administrative Code (AAC) R2-7-1002, Cooperative Purchasing, the following document shall relay all additional requirements for the State of Arizona in its use and participation in the NASPO Value Point contract for Digital Print & Quick Copy Services, Master Agreement Contract Number MA3714 as competitively awarded by the State of Utah as Lead State (Master Agreement). Portions of the Master Agreement are/may be reproduced herein for ease of reference only; the most recent version of the Master Agreement is available on the NASPO Value Point website. To the extent that terms are used in the Participating Addendum that are defined in the Master Agreement, the definition in the Master Agreement shall be incorporated in this Participating Addendum, as if stated herein.

All requirements stated within this document are allowable under the Arizona Procurement Code Arizona Procurement Code (A.R.S. §§ 41-2501 *et seq.*, and the rules promulgated thereunder, AAC R2-7-101 *et seq.*) Any attempt to modify or change this document without consent from the State of Arizona shall be null and void.

PARTICIPATING ADDENDUM

TO THE STATE OF ARIZONA:

The Undersigned hereby agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments as set forth in the Master Agreement and the Participating Addendum.

Company Name

Signature of Person Authorized to Sign Offer

_____		_____	
Address		Printed Name	
_____		_____	
City	State	Zip	Title
_____		_____	
Email		Phone Number	

By signature in the section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009- 09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization **IS/ IS NOT** a small business with less than 100 employees or has gross revenues of \$4 million or less.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona

Awarded this ____ day of _____, 2021

Stephen Nettles

Statewide Procurement Group Manager

1. **Participating Entity Modifications Or Additions To The Master Agreement**

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below:

☐ No changes to the terms and conditions of the Master Agreement are required.

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

4.1. Definition

4.1.1. “Contract” For the purpose of this Participating Addendum, the term Contract refers to the NASPO ValuePoint Master Agreement resulting from the NASPO ValuePoint Solicitation, as defined therein, and as modified by this Participating Addendum (including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work) and any Amendments to either the NASPO ValuePoint Master Agreement or the Participating Addendum.

4.2. The following attachments are hereby incorporated into this Participating Addendum “MPA”:

4.2.1. Attachment A – State of Arizona Special Terms and Conditions

4.2.2. Attachment B – State of Arizona Uniform Terms and Conditions

4.2.3. Attachment C – Participation In Boycott of Israel

2. Subcontractors: All contactors, dealers, and resellers authorized in the State of Arizona, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor’s dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
3. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating Entity: State of Arizona	Contractor:
Signature:	Signature:
Name: Stephen Nettles CPIM, CPSM	Name:
Title: Senior Procurement Group Manager	Title:
Date:	Date:

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	
Telephone:	
Email:	

***[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate
data bases.]***

STATE OF ARIZONA SPECIAL TERMS AND CONDITIONS

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1. Definition of Terms

1.1. Acceptance “Acceptance” means the document headed “Participating Addendum” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Master Agreement and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.

1.2. Contract

1.3. Arizona Procurement Code; A.R.S.; A.A.C. “Arizona Procurement Code” means, collectively, Title 41 Chapter 23, *et. sequitur*, in the Arizona Revised Statutes (abbreviated “A.R.S.”) and administrative rules R2-7-101 *et. sequitur* in the Arizona Administrative Code (abbreviated “A.A.C.”).

The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

The Arizona State Legislature provides the official A.R.S. online at:

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

The Office of the Arizona Secretary of State provides the official A.A.C. online at:

<http://www.azsos.gov/rules/arizona-administrative-code>

1.4. Arizona TPT Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:

<https://www.azdor.gov/business/transactionprivilegetax.aspx>.

1.5. Attachment any item that:

1.5.1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);

- 1.5.2. was attached to an Offer when submitted; and
- 1.5.3. was included in the Accepted Offer.
- 1.6. Pricing Document is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7. Contract Amendment : a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.
- 1.8. Contract Terms and Conditions: the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9. Contractor: the Person identified on the **MPA** who has entered into the Contract with State.
- 1.10. Contractor Indemnitor: Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.11. Co-Op Buyer: a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).
- NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.12. Reserved
- 1.13. Indemnified Basic Claims means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.14. Reserved
- 1.14.1. Order the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”: “Release” or “Release Purchase Order” in The State’s e-Procurement System;

1.14.2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or

1.14.3. “purchase order” for buying by Co Op Buyers, if co-op buying applies.

The State’s e-Procurement System: State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

- 1.15. State with respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co Op Buyer who has issued the Order.
- 1.16. State Indemnities collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.17. Subcontractor has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.18. Workthe totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2. Contract Interpretation

2.1. Usage

Where the Contract:

- 2.1.1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in

every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;

- 2.1.2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that:
 - 2.1.2.1. where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and
 - 2.1.2.2. where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
- 2.1.3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
- 2.1.4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes” in every instance;
- 2.1.5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
- 2.1.6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

2.2. Contract Order of Precedence

- 2.2.1. **COMPLEMENTARY DOCUMENTS.** All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

2.2.2. CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

2.2.2.1. State of Arizona Participating Addendum and Exhibits A, B, and C;

2.2.2.2. Master Agreement including all Addendums, in the order of precedence stated therein.

2.2.3. ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3. Independent Contractor Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4. Complete IntegrationThe Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3. Contract Administration and Operation

3.1. Term of MPA will commence on the date indicated on the Execution page of the Participating Addendum and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.

3.2. MPA Contract Extensions State may at its discretion extend the initial MPA term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term as set forth in the MA.

3.3. Notices and Correspondence

3.3.1. TO CONTRACTOR. State shall:

3.3.1.1. address all Contract correspondence other than formal notices to the email address indicated in the State's e-Procurement System Vendor Profile; and

3.3.1.2. address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated in this MPA, as that address might have been amended during the term of the Contract.

3.3.2. TO STATE. Contractor shall :

3.3.2.1. address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and

3.3.2.2. address any required notices to State to Procurement Officer identified as "Contract Owner" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 305
Phoenix, AZ 85007

3.3.3. CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4. Signing of Contract Amendments

3.4.1. Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:

3.4.1.1. extension of the term of the Contract within the maximum aggregate term;

3.4.1.2. revision to Procurement Officer appointment or contact information; or

3.4.1.3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

3.4.2. In every case other than those listed in (3.4.1.1), (3.4.1.2), and (3.4.1.3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

3.5. Click Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic

order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an “Electronic Ordering System”), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6. Books and Records

- 3.6.1. RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.
- 3.6.2. RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.
- 3.6.3. AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7. Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8. Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor’s or Subcontractors’ plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or

that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9. Ownership of Intellectual Property

3.9.1. **RIGHTS IN WORK PRODUCT.** All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

3.9.1.1. "Government Purpose Rights" are:

- 3.9.1.1.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- 3.9.1.1.2. the right to release or disclose that work product to third parties for any State government purpose; and
- 3.9.1.1.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

3.9.1.2. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2. **JOINT DEVELOPMENTS.** The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3. **PRE-EXISTING MATERIAL.** All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or

applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- 3.9.3.1. any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- 3.9.3.2. any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- 3.9.3.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.

- 3.9.4. DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

3.10. Subcontracts

- 3.10.1. INITIAL LIST. At the time of the Utah's Master Contract execution, Contractor's candidate Subcontractors were to be identified. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
- 3.10.2. ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that
 - 3.10.2.1. was not identified at the time of the MMCAP Infuse Master Contract execution or
 - 3.10.2.2. for any Materials or Services categories other than the ones for which they were previously consented.
 - 3.10.2.3. For either case (3.10.1.1.) or (3.10.1.2.), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3. FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11. Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12. Orders

3.12.1. ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2. ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3. ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4. SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required:

3.12.4.1. the Contract is identified as being a "single-agency/single-project" contract and

3.12.4.2. the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5. NO MINIMUMS OR COMMITMENTS

3.12.5.1. Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders;

3.12.5.2. State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract;

3.12.5.3. Contractor shall only deliver or perform as authorized by Orders; and

3.12.5.4. State is not limited as to the number of Orders it may issue for the Contract.

3.12.5.5. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co Op Buyer issues it.

3.12.6. NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13. Provisions for Statewide Contracts: Co-Op Usage; Eligible Agencies; and Quarterly Reporting

3.13.1. The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

3.13.2. The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

3.13.3. Co-Op Usage

3.13.3.1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>

3.13.3.2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the

sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed

or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

- 3.13.3.3. Contractor shall pay State an administrative fee against all Contract sales to Co Op Buyers, as provided for under A.R.S. § 41 2633. The fee rate is one (0%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

- 3.13.3.4. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

3.13.4. Eligible Agencies – Orders

- 3.13.4.1. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:

3.13.4.1.1. "Approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or,

3.13.4.1.2. "Rejecting" the Order electronically in The State's e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 (Orders are Obligatory).

- 3.13.4.2. Unless and until Contractor has approved the Order in the State's e-Procurement System, it will have no effect under the Contract and will not oblige either State or

Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically In The State's e-Procurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.

3.13.5. Quarterly Usage Reports

Contractor shall submit to State a Quarterly Usage Report documenting all Contract sales to both Eligible Agencies and Co Op Buyers, itemized separately. A Quarterly Usage Report shall still be submitted, even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

3.14. Multiple-Use Provisions

3.14.1. Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

- 3.14.1.1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
- 3.14.1.2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
- 3.14.1.3. As described in (3.14.1.2.) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and

locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.

3.14.1.4. As described in (3.14.1.3.) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

3.14.2. When evaluating the proposals under (3.14.1.3) and (3.14.1.4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.15. Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.16. Work on State Premises

3.16.1. COMPLIANCE WITH RULES

Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2. PROTECTION OF GROUNDS AND FACILITIES

Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

4. Costs and Payments

4.1. Payments

4.1.1. PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true:

4.1.1.1. all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and

4.1.1.2. Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2. PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated in the States E-procurement System.

4.2. Applicable Taxes

4.2.1. CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of

transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

- 4.2.2. TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5. Contract Changes

5.1. Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2. Assignment and Delegation

- 5.2.1. IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State

satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

- 5.2.2. IN PART. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6. Risk and Liability

6.1. Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2. Contractor Insurance

- 6.2.1. Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.
- 6.2.2. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$1,000,000
Products – Completed Operations Aggregate	\$10,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include

the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker’s Compensation and Employers’ Liability

Workers’ Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

ACCEPTABILITY OF INSURERS: Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to , commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Officer as listed in the E-procurement system by email. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverage's, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3. Indemnification

- 6.3.1. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or

omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

- 6.3.2. This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4. Patent and Copyright Indemnification

- 6.4.1. CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

- 6.4.1.1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
- 6.4.1.2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
- 6.4.1.3. State may elect to participate in such action at its own expense; and
- 6.4.1.4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

- 6.4.2. If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5. Force Majeure

- 6.5.1. DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood,

lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [Performance in Public Health Emergency], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

- 6.5.2. RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are

on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

- 6.5.3. EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

- 6.5.4. DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

6.6. Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7. Warranties

7.1. Conformity to Requirements

7.1.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance:

- 7.1.1.1. conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, drawings identified, and any Contractor affirmations included as part of the Contract;
- 7.1.1.2. be free from defects of material and workmanship;
- 7.1.1.3. conform to or perform in a manner consistent with current industry standards; and
- 7.1.1.4. be fit for the intended purpose or use described in the Contract.

7.1.2. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2. Contractor Personnel

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.3. Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4. Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [Contractor Licenses] and all required permits valid and in force.

7.5. Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.2 [Assignment and Delegation] that expressly recognizes the event.

7.6. Performance in Public Health Emergency

7.6.1. Contractor warrants that it will:

- 7.6.1.1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
 - 7.6.1.1.1. identification of response personnel by name;
 - 7.6.1.1.2. key succession and performance responses in the event of sudden and significant decrease in workforce; and
 - 7.6.1.1.3. alternative avenues to keep sufficient product on hand or in the supply chain; and
 - 7.6.1.1.4. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

- 7.6.2. For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7. Lobbying

7.7.1. PROHIBITION.

7.7.1.1. Contractor warrants that:

- 7.7.1.1.1. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

7.7.1.1.2. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

7.7.1.2. Contractor shall implement and maintain adequate controls to assure compliance with above.

7.7.1.3. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2. EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8. Survival of Warranties

All representations and warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8. State's Contractual Remedies

No modifications to uniform terms and conditions section

9. Contract Termination

No modifications to uniform terms and conditions section

10. Contract Claims

10.1. Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2. Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11. General Provisions for Materials

11.1. Applicability

Article 11 applies to the extent the Work is or includes Materials.

11.2. Off-Contract Materials

Contractor shall ensure that the design and/or procedures for the Materials ordering method

prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, neither case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3. Compensation for Late Deliveries

Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them.

Indicate Shipping Costs on Order

Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)

11.4. Current Products

Contractor shall keep all products being offered under the Contract:

11.4.1. in current and ongoing production;

11.4.2. in its advertised product lines;

11.4.3. as models or types that are actively functioning in other paying customer environments; and

11.4.4. in conformance to the requirements of the Contract

11.5. Maintain Comprehensive Selection

Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co Op Buyers if applicable.

11.6. Additional Products

11.6.1. State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include:

- 11.6.1.1. documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and
- 11.6.1.2. documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of this typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

11.7. Discontinued products

11.7.1. If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

- 11.7.1.1. manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number;
- 11.7.1.2. documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and

- 11.7.1.3. documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.

11.8. Forced Substitutes

Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

11.9. Recalls

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

11.10. Delivery

11.10.1. PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#)

11.10.2. LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).

11.10.3. PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately

11.11. Delivery Time

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order

11.12. Delivery Locations

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

- 11.12.1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
- 11.12.2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
- 11.12.3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
- 11.12.4. if the Contract is for unrestricted statewide use, then:
 - 11.12.4.1. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - 11.12.4.2. If a prospective Co Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
 - 11.12.4.3. if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

11.13. Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

11.14. Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

11.15. Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.

11.15.1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

11.15.2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

11.15.3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.16. Returns

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason

having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

11.17. Order Cancellations

11.17.1. State may cancel orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

11.17.1.1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day

11.17.1.2. reimburse Contractor for:

11.17.1.2.1. its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;

11.17.1.2.2. the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question;

11.17.1.3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

11.17.2. By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

11.18. Product Safety

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant.

11.19. Hazardous Materials

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard

communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is:

11.19.1. identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or

11.19.2. subject to statutory or regulatory requirement governing special handling, disposal or cleanup

12. General Provisions for Services

12.1. Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2. Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co Op Buyers if co op buying applies.

12.3. Additional Services

State at its discretion may modify the range of services by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4. Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.

12.5. Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6. Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor.

As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.7. Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8. Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.9. Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10. Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

- 12.10.1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
- 12.10.2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.

- 12.10.3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13. Data and Information Handling

13.1. Applicability

- 13.1.1. Article 13 applies to the extent the Work includes handling of any:
 - 13.1.1.1. State's proprietary and sensitive data or
 - 13.1.1.2. confidential or access-restricted information obtained from State or from others at State's behest.

13.2. Data Protection and Confidentiality of Information

- 13.2.1. Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

- 13.2.1.1. Contractor shall:

- 13.2.1.1.1. notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse;
 - 13.2.1.1.2. cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and
 - 13.2.1.1.3. notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

- 13.2.1.2. Contractor shall not:

- 13.2.1.2.1. release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or

13.2.1.2.2. respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3. Personally Identifiable Information.

13.3.1. Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

13.3.1.1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information", January 3, 2017; and

13.3.1.2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

13.4. Protected Health Information

13.4.1. Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

13.4.1.1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection:

13.4.1.1.1. the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996;

- 13.4.1.1.2. Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and
- 13.4.1.1.3. State's current and published PHI/ePHI privacy and security policies and procedures;
- 13.4.1.2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (13.4.1.1.) above; and
- 13.4.1.3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (13.4.1.1.) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

14. Information Technology Work

14.1. Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 6: " . . . computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.

14.2. Background Checks

Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3. Information Access

14.3.1. SYSTEM MEASURES.

Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or

networks containing or transmitting State's proprietary data or confidential information.

14.3.2. INDIVIDUAL MEASURES.

Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

14.3.3. ACCESS CONTROL.

Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4. Pass-Through Indemnity

14.4.1. INDEMNITY FROM THIRD PARTY.

For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

14.4.2. NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

- 14.4.2.1. State reserves the right to elect to participate in the action at its own expense;
- 14.4.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- 14.4.2.3. State shall in any case cooperate in the defense and any related settlement negotiations.

14.5. Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6. Redress of Infringement

- 14.6.1. REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:
 - 14.6.1.1. replace any infringing items with non-infringing ones;
 - 14.6.1.2. obtain for State the right to continue using the infringing items; or
 - 14.6.1.3. modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.
- 14.6.2. CANCELLATION OPTION. In every case under, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
 - 14.6.2.1. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - 14.6.2.2. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - 14.6.2.3. for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

- 14.6.3.1. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- 14.6.3.2. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- 14.6.3.3. combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7. First Party Liability Limitation

14.7.1. LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2. PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

- 14.7.2.1. Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- 14.7.2.2. claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
- 14.7.2.3. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.3. PURCHASE PRICE DETERMINATION.

If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.4. NO EFFECT ON INSURANCE.

This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8. Information Technology Warranty

14.8.1. SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

14.8.1.1. modified or altered by anyone not authorized by Contractor to do so;

14.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or

14.8.1.3. operated in a manner not within its intended use or environment.

14.8.2. COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

14.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

14.8.2.2. the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally

14.8.2.3. identifiable information, or prevent products from performing as required by the Contract; and

14.8.2.4. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.

14.8.3. PAYMENT HAS NO EFFECT.

The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9. Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty

under paragraph 14.8 includes, at State's discretion, re performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.10. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.11. Cloud Applications

14.11.1. The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

14.11.1.1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.

14.11.1.2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.

14.11.1.3. Contractor must submit copy of system logs from cloud system to **State of Arizona** security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

14.11.2. Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

END OF ATTACHMENT A: SPECIAL TERMS AND CONDITIONS

STATE OF ARIZONA UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1. "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2. "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "Contractor" means any Person who has a Contract with the State.
- 1.5. "Days" means calendar days unless otherwise specified.
- 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11. "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12. "State Fiscal Year" means the period beginning with July 1 and ending June 30.

- 1.13. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

2. Contract Interpretation

2.1. Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

- 2.3. Contract Order of Precedence In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1. Special Terms and Conditions;
- 2.3.2. Uniform Terms and Conditions;
- 2.3.3. Statement or Scope of Work;
- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain

any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the

Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10. E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11. Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes.

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification.

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

4.3.4. IRS W9 Form.

In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

4.4. Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

5. Contract Changes

5.1. Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency)

The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language

Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification – Patent and Copyright

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure

6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war;

riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for

one year after acceptance by the State of the materials, they shall be:

- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the materials are used;
- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance with Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders.

The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order

- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender Materials or services supplied under this Contract

All materials and services shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted

before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default

- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

END OF ATTACHMENT B: UNIFORM TERMS AND CONDITIONS

Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the "Exempt Solicitation, Contract, or Contractor" option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 *et seq.*, all offerors must select one of the following:

- ☐ The Company submitting this Offer **does not** participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 *et seq.*

I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

- ☐ The Company submitting this Offer **does** participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq.*
- ☐ **Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

- ☐ Solicitation or Contract has an estimated value of less than \$100,000;
- ☐ Contractor is a sole proprietorship;
- ☐ Contractor has fewer than ten (10) employees; and/or
- ☐ Contractor is a non-profit organization.

<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">Company Name</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">Signature of Person Authorized to Sign</div>
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">Address</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">Printed Name</div>
<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="display: flex; justify-content: space-around;">CityStateZip</div>	<hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> <div style="text-align: center;">Title</div>

END OF ATTACHMENT C: BOYCOTT OF ISRAEL

State of Utah Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for services (including professional services), meaning the furnishing of labor, time, or effort by a contractor. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
 - b) "**Contract**" means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor sign.
 - d) "**Contractor**" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) "**Division**" means the State of Utah Division of Purchasing.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Services**" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but are not limited to, all of the deliverable(s) and Custom Deliverable that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - j) "**Proposal**" means Contractor's response to the Division's Solicitation.
 - k) "**Solicitation**" means the documents used by the Division to obtain Contractor's Proposal.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the Division, Eligible Users, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being

given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for Services properly performed prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

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

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

14. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

15. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

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

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

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

16. **RESERVED.**

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

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

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
25. **ORDERING:** Orders will be placed by the Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
26. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Eligible User.
If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return any deliverable related to the Services for a full refund; (ii) require Contractor to promptly correct or reperform

the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

27. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Service(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
28. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
29. **TIME IS OF THE ESSENCE:** Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.
30. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
31. **PERFORMANCE EVALUATION:** The Eligible User may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
32. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Eligible User and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
33. **REVIEWS:** The Division and Eligible Users reserve the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Services, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract, shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
36. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,

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

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

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

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

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

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

39. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.

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

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

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

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

42. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce

Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.

43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
46. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
47. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
48. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
49. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
50. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
51. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

State of Connecticut Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

1. Scope

This Participating Addendum allows for the purchase of travel management services, led by the State of Oregon along with a multi-state sourcing team for use by State of Connecticut agencies and political subdivisions and institutions in accordance with Conn. Gen. Stat. §4a-53 located in the participating State/Entity authorized by that State's statutes to utilize its State contracts, and which receives prior written approval of the State's Chief Procurement Official.

The Participating State will identify this Participating Addendum as the State of Connecticut ("State"), Department of Administrative Services (DAS), Procurement Division Contract #22PSX0017

2. Participation

The National Association of State Procurement Officials ("NASPO") is the Cooperative Purchasing Organization, LLC doing business as NASPO ValuePoint. Use of specific NASPO ValuePoint cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual State's statutes to use State/Entity contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Each using State agency, political subdivision and institution in accordance with Conn. Gen. Stat. §4a-53 ("Participating Entity") that purchases under the NASPO ValuePoint Master Agreement Number

S-10700-00001827 ("Master Agreement") will be treated as an individual customer(s). Except to the extent modified by this Participating Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement and will have the same rights and responsibilities for purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities.

3. Order of Precedence

- a. A Participating Entity's Participating Addendum. A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of State of Oregon NASPO ValuePoint Master Agreement;
- b. State of Oregon NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions);
- c. The Solicitation including all Addendums; and
- d. Contractor's response to the Solicitation.

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 the Master Agreement are only those that are expressly

accepted by the Lead State in writing, and attached to the Master Agreement. No other terms and conditions apply. The Solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Primary Contacts

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

Lead State:

Name: State of Oregon
Address: 1225 Ferry St SE, Salem, Oregon 97301
Contact Person: Kaliska King
Telephone: 503.798.1907
E-mail: Kaliska.king@oregon.gov

Contractor:

Name: «Contractor Name»
Address: «Contractor Address»
Contact Person: «Contractor Contact Person»
Telephone: «Contractor Phone Number»
E-mail: «Contractor Email Address»

Participating Entity:

Name: State of Connecticut, Department of Administrative Services,
Procurement Division
Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103
Contact Person: Jill Belisle
Telephone: 860-713-5149
E-mail: jill.belisle@ct.gov

5. Orders

Any order placed by a Participating Entity through the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties of the order agree in writing that another contract or agreement applies to such order.

All purchase orders shall contain the Master Agreement No. **S-10700-00001827** and the DAS Contract No. 22PSX0017

6. Participating State Modifications or Additions to Master Agreement

The parties agree that the following provisions of this Participating Addendum shall apply to any action, purchase or purchase order issued by the State or any of its Participating Entities.

6.1 Definitions

The following definitions apply to this Participating Addendum:

a. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

b. Client Agency

Any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in this State and any entity identified in Conn. Gen. Stat. Sec. 4a-53, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms of this Contract.

c. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

d. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is

capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

e. **Contract**

Master Agreement and this Participating Addendum.

f. **Contractor**

The person or entity who executes the Contract.

g. **Contractor Parties**

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

h. **Deliverable**

Each (1) good, service, documentation, process or information of any type, and whether or not used for administrative, consulting, training, data warehousing, operations, support, or fulfillment of Performance and (2) Deliverable(s) listed in the pricing schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

i. **Perform**

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The work "Perform" includes all parts of speech.

j. **Records**

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

6.2 Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the

Contractor.

6.3 Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

6.4 Sovereign Immunity

The parties acknowledge and agree that nothing in this Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.

6.5 Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

6.6 Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

6.7 Executive Orders and Other Enactments

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean

Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. At the Contractor's request, the Client Agency shall provide a copy of these Enactments to the Contractor. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments.

- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04; and (3) Executive Order Nos. 13F and 13G of Governor Ned Lamont, promulgated September 3, 2021 and September 10, 2021, respectively, concerning protection of public health and safety during COVID-19 pandemic, as extended by Executive Order No. 14A of Governor Ned Lamont, promulgated September 30, 2021. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

6.8 Nondiscrimination

- a. For purposes of this Section, the following terms are defined as follows:
 - 1. "Commission" means the Commission on Human Rights and Opportunities;
 - 2. "Contract" and "contract" include any extension or modification of this Contract;
 - 3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;"
 - 4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
 - 5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
 - 6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
 8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
 9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
 10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.
- b. For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the State, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).
1. The Contractor agrees and warrants that in the Performance of this Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;
 2. the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission;
 3. the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the

Contractor's commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment;

4. the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a- 68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and
 5. the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
 - d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
 - e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
 - f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the Term of this Contract and any amendments thereto.
 - g.
 1. The Contractor agrees and warrants that in the Performance of this Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;
 2. the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Contract or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers'

representative of the Contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

3. the Contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §46a-56; and
4. the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes §46a-56.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by either (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, or (B) initialing this nondiscrimination affirmation in the following box: ☐

6.9 Indemnification

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.
- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract. Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to DAS prior to the Effective Date of this Contract. Contractor shall not begin Performance until the delivery of the policy to DAS. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Client Agency or the State was contributorily negligent.
- f. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

6.10 Tangible Personal Property

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
 - 1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 - 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - 3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 - 4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 - 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the general statutes.
- b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in Section 12-1 of the general statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

6.11 Audit and Inspection of Plants, Places of Business and Records

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.
- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. Contractor will pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.
- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

6.12 Protection of Confidential Information

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 3. A process for reviewing policies and security measures at least annually;
 4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
 5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a-701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.
- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

6.13 Audit Requirements for Recipients of State Financial Assistance

For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The Contractor shall provide for an annual financial audit acceptable to the Client Agency for any expenditure of state awarded funds made by the Contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The Contractor will comply with federal and state single audit standards as applicable.

6.14 Lead State Terms that shall not apply to Connecticut.

The parties hereby agree that any provision in the Standard Terms and Conditions of the NASPO ValuePoint, the State of Oregon's negotiated terms and conditions or the Master

Agreement between NASPO ValuePoint and «[Contractor Name](#)» and any of its Exhibits, shall not apply to Connecticut or any of the participating entities from Connecticut if the provision violates sovereign immunity or conflicts with this Participating Addendum. Further the parties agree that in any instance where a provision requires the State to indemnify the Contractor or that the parties are bound by binding arbitration that constitutes a violation of sovereign immunity, and therefore is not applicable.

6.15 Reserved.

6.16 Reserved.

6.17 Reserved.

6.18 Reserved.

6.19 Reserved.

6.20 Reserved.

6.21 Reserved.

6.22 Reserved.

6.23 Reserved.

6.24 Data: Access

Access to Contract and State Data.

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

6.25 P-Card (Purchasing Credit Card)

Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.

Contractor shall be equipped to receive orders issued by the Participating Entity using the P-Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Participating Entity or rendering of Services.

The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.

Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

6.26 Reserved.

6.27 Iran Energy Investment Certification

- a. Pursuant to section 4-252a of the Connecticut General Statutes, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this section, it shall not be subject to the penalties of false statement pursuant to section 4-252a of the Connecticut General Statutes. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

6.28 Large State Contract Representation for Contractor

Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- a. That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- b. That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- c. That the Contractor is submitting bids or proposals without fraud or collusion with any person.

6.29 Large State Contract Representation for Official or Employee of State Agency

Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or

employee represents that the selection of the most qualified or highest ranked person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

6.30 Consulting Agreements Representation

Pursuant to section 4a-81 of the Connecticut General Statutes, the Contractor makes the representations set forth in Exhibit A, Consulting Agreements Representation.

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

Participating Entity: State of Connecticut Dept. of Administrative Services Procurement Division	Contractor: «Contractor Name»
By: (Original Signature on Document in Procurement Files)	By: (Original Signature on Document in Procurement Files)
Name: «Contracting Staff Name Signing RFP MC»	Name:
Title: «Contracting Staff Title RFP MC»	Title:
Date:	Date:

ATTACHMENT G

REVISED STATE SPECIFIC TERMS AND CONDITIONS

State of Oregon Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

1. Incorporation of Master Agreement. Participating Entity and Purchasing Entities are entitled to rely upon all of the representations and warranties, rights, remedies, and benefits under the Master Agreement and this Addendum, subject to the State-Specific Constitutional, Statutory and other requirements set forth in this Addendum.

2. Definitions. Capitalized terms not defined in this Addendum have the meaning described to them in the Master Agreement. The following terms have the meanings set forth below and apply to Services delivered under Requests for Services under this Addendum:

“ORCPP” means the Oregon Cooperative Purchasing Program. ORCPP members include agencies and organizations within the State of Oregon that are authorized to purchase the Services available under a price agreement or master agreement entered into by the State.

3. Requests for Services

3.1 Eligibility to Request Services and Enter into Contracts. All state agencies under DAS PS procurement authority and all state agencies with their own procurement authority, institutions of higher institution, political subdivisions and other entities that are members of the Oregon Cooperative Purchasing Program (ORCPP), are eligible to acquire Services under this Addendum.

3.2 Verification of Purchasing Entities. Contractor shall verify that it provides Services under this Addendum only to eligible Purchasing Entities. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the OregonBuys eProcurement system at <https://oregonbuys.gov/bso/>.

4. Payment Provisions; Expenses. All payments are subject to ORS 293.462. Purchasing Entity will not be obligated to pay any travel expenses unless expressly agreed upon in a Contract. Any obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations set under Oregon law. Contracts with the State of Oregon are subject to the rates and limitations of the

Statewide Travel Policy, currently found online at:
<http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

5. Funds available and authorized/non-appropriation. The State's and its agencies' payment obligations under this Addendum are conditioned upon the Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Request for Services issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Request for Services from any part of Oregon state government other than the Purchasing Entity that made the Request for Services. Nothing in this Addendum or Request for Services is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Request for Services issued under this Addendum.

6. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF). Contractor shall submit volume sales reports and pay the administrative fee as set forth in Exhibit No. 4.

7. Dispute Resolution. Any dispute between the parties under this Addendum that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes. Neither party waives its right to a jury trial or right to participate in class, collective, or representative claims.

8. Control of Defense and Settlement. Contractor's obligation to indemnify Purchasing Entity as set forth in the Master Agreement is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity becomes aware. Contractor shall have control of the defense and settlement of any claim that is subject to indemnification; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Purchasing Entity of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

9. Limitation of Liability. Participating Entity's or a Purchasing Entity's liabilities and any indemnification obligations to Contractor are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

10. Insurance. Within ten (10) business days of the Effective Date, Contractor shall deliver to DAS PS a certificate evidencing the insurance coverage set forth in the Master Agreement. No Request for Services may be placed or accepted until proof is provided that these requirements have been met. Purchasing Entities may request additional insurance coverage, as necessary.

11. Jurisdiction and Venue.

- 11.1** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Request for Services under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.
- 11.2** Any Claim (as defined above) between Contractor and an Purchasing Entity other than the State of Oregon or a State agency that arise from or are related to an individual Request for Services or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Purchasing Entity resides or has its principal office, or at Purchasing Entity's option, within such other county as Purchasing Entity will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

12. Remedies. If any Services furnished by Contractor are, in Contractor's opinion, likely to become the subject of a third party claim for infringement of an intellectual property right, or if an Purchasing Entity is prevented from exercising its rights under this Addendum based on any infringement claim or court order arising from any infringement claim, then Contractor may, at its option and expense, procure for Purchasing Entity the right to continue using the allegedly infringing Services, or replace or modify the Services so that they become non-infringing; provided that the replacement or modified Services meets

the specifications set forth in the applicable Request for Services to the satisfaction of the Purchasing Entity. If the foregoing remedies are not available, then Purchasing Entity will terminate the allegedly infringing Services, and Contractor will refund Purchasing Entity's payments, in full, for the allegedly infringing Services.

13. Term and Termination of Participating Addendum.

13.1 Term. This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

13.2 Termination. In addition to its termination rights under the Master Agreement, DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) calendar days prior written notice to Contractor.

13.3 Termination of Individual Contracts. In addition to its termination rights under the Master Agreement, Purchasing Entity may, at its sole discretion, in whole or in part, upon 30 calendar days written notice to Contractor, or Purchasing Entity and Contractor may agree to terminate a Contract at any time by written consent.

14. Governing Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Addendum and resulting Requests for Services, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

15. Compliance with Law.

15.1 General. In addition to the compliance of law provisions of the Master Agreement, Contractor shall comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to Contractor or to the Goods or Services ordered under this Addendum or any Request for Services. Further, a Purchasing Entity's performance under a Request for Services is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270.

15.2 Pay Equity. Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Addendum and a failure to comply constitutes a breach that entitles DAS PS or Purchasing Entity to terminate this Addendum or a Request for Services for cause.

15.2.1 Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

15.3 False Claims. Contractor understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Addendum, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Addendum or any Contract, including but not limited to Contractor invoices, correspondence, reports, or other deliverables.

15.4 Non-Discrimination. Contractor certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material condition, to maintain such policy and practice in force during the term of this Addendum and each Request for Services.

15.5 Tax Compliance. Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318; Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

15.5.1 Any violation of this section constitutes a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DAS PS or Purchasing Entity, as applicable, to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable Contract, in whole or in part;

- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Purchasing Entity's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services.

15.5.2 These remedies are cumulative to the extent the remedies are not inconsistent, and DAS PS or Purchasing Entity may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

15.5.3 18.6 This Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes and debt due to the State of Oregon or a political subdivision, including (i) garnishing Contractor's compensation under any Contract under this Addendum entered into by a Purchasing Entity subject to DAS PS' authority, or (ii) exercising a right of setoff against Contractor's compensation relating to this Addendum for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

15.6 Compliance with Executive Order 21-29. Contractor shall comply with State of Oregon Executive Order 21-29 (EO 21-29), COVID-19 Vaccination Requirement for State Executive Branch.

15.6.1 Definitions. The following definitions are provided for this certification:

- "EO 21-29" means Governor of the State of Oregon's Executive Order 21-29, including as may be amended: https://www.oregon.gov/gov/Documents/executive_orders/eo_21-29.pdf.
- "FAQ" means [the Executive Order 21-29 Vaccination Requirements for State Contractors Frequently Asked Questions, including as may be amended: Executive Order 21-29 ContractorFAQ.pdf \(oregon.gov\)](#).
- "Executive Branch," "COVID-19," "Fully Vaccinated," "Proof of Vaccination," "Employee," and "Worker" have the meanings defined in EO 21-29.
- "Worksite" has the meaning defined in the FAQ.

15.6.2 Contractor certifies that for the term of the Addendum and each Contract entered into under this Addendum, or the duration of EO-21-29, whichever expires or terminates first, each Worker who provides goods or services at an Executive Branch Worksite is Fully Vaccinated against COVID-19 unless an exception under paragraph 6 of EO 21-29 applies.

15.6.3 Contractor shall maintain documentation of its compliance with EO 21-29 and provide written certification of its compliance with EO 21-29 on request of the State.

15.6.4 Contractor's compliance with this 15.6 is a material term of this Addendum, and Contractor's failure to comply constitutes a breach entitling DAS PS to terminate this Addendum for cause.

15.7 Application of Public Records Law. Participating Entity or Purchasing Entity's obligations of confidentiality, if any, are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.311 to 192.478, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475.

15.8 Recycled Products. To the maximum extent economically feasible in the performance of this Addendum or any Request for Services, Contractor will use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

15.9 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that department relative to the Addendum or any Request for Services. A Purchasing Entity may withhold final payment under a Request for Services until Contractor has provided the Oregon Department of Revenue with the required information.

15.10 Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Purchasing Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity in any way. Contractor is not an "officer", "employee", or "agent" of Purchasing Entity (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

15.11 Access to Records. Contractor will maintain all fiscal records relating to Requests for Services in accordance with generally accepted accounting principles and will maintain any other records relating to Requests for Services in such a manner as to clearly document Contractor's performance thereunder. The Purchasing Entity, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Purchasing Entities. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following

final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

- 15.12 Severability.** If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.
- 15.13 Survival.** Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.
- 15.14 Amendments.** The parties may amend this Addendum to modify selected terms, conditions, and price(s). This Addendum may be modified by written document only.

Exhibit No. 3

CONTRACTOR TAX INFORMATION

Contractor Information. This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Contractor Name (exactly as filed with the IRS): _____

Street
address: _____

City, state,
zip code: _____

Email
address: _____

Telephone: _____ () _____ Fax: _____ () _____

Contractor's taxpayer identification numbers;

Federal Tax Number _____ Oregon Tax Number _____

Is Contractor a nonresident alien, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box): ☐ YES ☐ NO

Business Designation: (Check one box):

☐ Professional Corporation

☐ Limited Partnership

☐ Limited Liability Company

☐ Corporation

☐ Sole Proprietorship

☐ Partnership

☐ Nonprofit Corporation

☐ Limited Liability Partnership

☐ Other

EXHIBIT NO. 4

VENDOR COLLECTED ADMINISTRATIVE FEE (VCAF)/VOLUME SALES REPORT (VSR)

1) Volume Sales Reports (VSRs). Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>. Contractor shall submit a Volume Sales Report (VSR) to DAS PS on a quarterly basis. The quarterly report is due no later than thirty (30) calendar days from the end of the quarter. Quarters end March 31, June 30, September 30 and December 31. Upon written notice from DAS PS, Contractor shall submit the VSR on a monthly basis no later than five (5) business days from the end of the preceding month, as directed by DAS PS.

The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating ***“No Sales for the Reporting Period”***.

2) Vendor Collected Administrative Fee (VCAF). Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee (VCAF), as directed by DAS PS. The VCAF is a charge equal to Two Percent (2.0%) of Contractor’s Gross total sales, less any credits, made to Purchasing Entities during the reporting period.

Contractor may not reflect the VCAF fee as a separate line item charge to Purchasing Entities. Contractor’s prices must reflect all Contractor’s charges to Purchasing Entities.

Contractor is responsible for timely payment of the VCAF, regardless of entity that actually reports or makes VCAF payment to DAS PS. The form of payment must be specifically approved by the Contract Administrator. Late payments from Contractor will accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall

have been paid in full.

Audit. DAS PS may, upon reasonable request during regular business hours, by itself or by a person authorized by it, audit Contractor's records and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest. If the audit reveals that an underpayment exists, Contractor shall pay the cost of the audit.

3) Sample Report.

Fields		Data									
Price Agreement Number				General instructions: VCAF Rate/Structure is determined by your contract.							
Vendor Name											
Reporting Period		Period X									
VCAF Rate or Structure											
Form of e-Payment (Debit /Credit)											
Type of Report (Original, Corrective)		Original									
Vendor/Contact E-mail											
Vendor/Contact Phone											
PO #	Customer Name	Authorized Purchaser	Type of Commodity	Quantity of Items Sold	Unit Cost	Total Value of Line Item	Enter VCAF Amount	Invoice Number	Date of Sale		
						Total VCAF Fee to OR	0.00				

State of New Mexico Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

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.

D. Retainage.
Reserved

E. Performance Bond.
Reserved

2. 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, if the State Purchasing Agent has signed this Agreement, 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.

3. 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.

4. 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.

5. 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.

6. 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.

7.

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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505

To the Contractor:

XXXXXXXXXXXXXXXXXXXXXXX

18. Succession:

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

19. 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.

20. 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.

21. 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.

22. 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.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows:

<u>Quarter:</u>	<u>Period End:</u>	<u>Report Due:</u>
First	September 30	October 31
Second	December 31	January 31
Third	March 31	April 30
Fourth	June 30	July 31

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the "State Purchasing Division." This contract number ##-00000-##-##### must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:

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

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

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

State of Montana Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

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.L. 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.L. 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.

State of Arizona Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

In accordance with Arizona Revised Statute (A.R.S.) §41-2632 and Arizona Administrative Code (AAC) R2-7-1002, Cooperative Purchasing, the following document shall relay all additional requirements for the State of Arizona in its use and participation in the NASPO Value Point contract for Digital Print & Quick Copy Services, Master Agreement Contract Number MA3714 as competitively awarded by the State of Utah as Lead State (Master Agreement). Portions of the Master Agreement are/may be reproduced herein for ease of reference only; the most recent version of the Master Agreement is available on the NASPO Value Point website. To the extent that terms are used in the Participating Addendum that are defined in the Master Agreement, the definition in the Master Agreement shall be incorporated in this Participating Addendum, as if stated herein.

All requirements stated within this document are allowable under the Arizona Procurement Code Arizona Procurement Code (A.R.S. §§ 41-2501 *et seq.*, and the rules promulgated thereunder, AAC R2-7-101 *et seq.*) Any attempt to modify or change this document without consent from the State of Arizona shall be null and void.

PARTICIPATING ADDENDUM

TO THE STATE OF ARIZONA:

The Undersigned hereby agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments as set forth in the Master Agreement and the Participating Addendum.

Company Name

Signature of Person Authorized to Sign Offer

_____		_____	
Address		Printed Name	
_____		_____	
City	State	Zip	Title
_____		_____	
Email		Phone Number	

By signature in the section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 2009- 09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization **IS/ IS NOT** a small business with less than 100 employees or has gross revenues of \$4 million or less.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona

Awarded this ____ day of _____, 2021

Stephen Nettles

Statewide Procurement Group Manager

1. **Participating Entity Modifications Or Additions To The Master Agreement**

These modifications or additions apply only to actions and relationships within the Participating Entity. Participating Entity must check one of the boxes below:

☐ No changes to the terms and conditions of the Master Agreement are required.

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

4.1. Definition

4.1.1. "Contract" For the purpose of this Participating Addendum, the term Contract refers to the NASPO ValuePoint Master Agreement resulting from the NASPO ValuePoint Solicitation, as defined therein, and as modified by this Participating Addendum (including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work) and any Amendments to either the NASPO ValuePoint Master Agreement or the Participating Addendum.

4.2. The following attachments are hereby incorporated into this Participating Addendum "MPA":

4.2.1. Attachment A – State of Arizona Special Terms and Conditions

4.2.2. Attachment B – State of Arizona Uniform Terms and Conditions

4.2.3. Attachment C – Participation In Boycott of Israel

2. Subcontractors: All contactors, dealers, and resellers authorized in the State of Arizona, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
3. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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

Participating Entity: State of Arizona	Contractor:
Signature:	Signature:
Name: Stephen Nettles CPIM, CPSM	Name:
Title: Senior Procurement Group Manager	Title:
Date:	Date:

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	
Telephone:	
Email:	

***[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate
data bases.]***

STATE OF ARIZONA SPECIAL TERMS AND CONDITIONS

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1. Definition of Terms

- 1.1. Acceptance “Acceptance” means the document headed “Participating Addendum” bearing the State contract number once Procurement Officer has signed it to signify (1) State’s formal acceptance of the Master Agreement and (2) the formation of the Contract. For clarity of intent, the foregoing is not to be confused with the term “acceptance” used throughout the Contract in the context of delivery, inspection, etc., with respect to Materials or Services.

1.2. Contract

- 1.3. Arizona Procurement Code; A.R.S.; A.A.C. “Arizona Procurement Code” means, collectively, Title 41 Chapter 23, *et. sequitur*, in the Arizona Revised Statutes (abbreviated “A.R.S.”) and administrative rules R2-7-101 *et. sequitur* in the Arizona Administrative Code (abbreviated “A.A.C.”).

The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

The Arizona State Legislature provides the official A.R.S. online at:

<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

The Office of the Arizona Secretary of State provides the official A.A.C. online at:

<http://www.azsos.gov/rules/arizona-administrative-code>

- 1.4. Arizona TPT Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at:

<https://www.azdor.gov/business/transactionprivilegetax.aspx>.

1.5. Attachment any item that:

- 1.5.1. the Solicitation required Offeror to submit as part of the relevant Offer (e.g., Initial Offer, Revised Offer, or BAFO);

- 1.5.2. was attached to an Offer when submitted; and
- 1.5.3. was included in the Accepted Offer.
- 1.6. Pricing Document is to be construed as referring to whatever item in the Contract contains the contracted pricing and payment provisions.
- 1.7. Contract Amendment : a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution.
- 1.8. Contract Terms and Conditions: the Special Terms and Conditions and these Uniform Terms and Conditions taken collectively.
- 1.9. Contractor: the Person identified on the **MPA** who has entered into the Contract with State.
- 1.10. Contractor Indemnitor: Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.11. Co-Op Buyer: a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).
- NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.
- 1.12. Reserved
- 1.13. Indemnified Basic Claims means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation, for bodily injury or personal injury, including death, or loss or damage to any real or tangible or intangible personal property, collectively. See paragraph 6.3.
- 1.14. Reserved
- 1.14.1. Order the instrument by which State authorizes Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends the scope of the Contract and how State will use it. The Special Terms and Conditions provide that information. Any of the following is to be construed as being an “Order”: “Release” or “Release Purchase Order” in The State’s e-Procurement System;

1.14.2. “task order”, “service order,” or “job order” when a Release Purchase Order for Services has already been committed in The State’s e-Procurement System; or

1.14.3. “purchase order” for buying by Co Op Buyers, if co-op buying applies.

The State’s e-Procurement System: State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, The State’s e-Procurement System – The Official State eProcurement System.

NOTE (1): Technical Bulletin No. 020 is available online at:

<https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations>

- 1.15. State with respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each of Eligible Agency or Co Op Buyer who has issued the Order.
- 1.16. State Indemnities collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.17. Subcontractor has the meaning given in A.R.S. § 41-2503(38), which, for convenience of reference only, is “... a person who contracts to perform work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a contract with a state governmental unit . . .”The Contract is to be construed as “a contract with a state governmental unit” for purposes of the definition. For clarity of intent, a Person carrying out any element of the Work is a Subcontractor from the moment they first carry out that element of the Work regardless of whether or not a Subcontract exists then or subsequently.
- 1.18. Workthe totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

2. Contract Interpretation

2.1. Usage

Where the Contract:

- 2.1.1. assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to “Contractor and all Subcontractors, whether they are first-tier subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractors’ respective agents, representatives, and employees” in

every instance unless the context plainly requires that it is be a reference only to Contractor as apart from Subcontractors;

- 2.1.2. uses the permissive “may” with respect to a party’s actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that:
 - 2.1.2.1. where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and
 - 2.1.2.2. where written only as “may,” the discretion is constrained by what is fair, reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;
- 2.1.3. uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
- 2.1.4. uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written “must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes” in every instance;
- 2.1.5. uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
- 2.1.6. uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

2.2. Contract Order of Precedence

- 2.2.1. **COMPLEMENTARY DOCUMENTS.** All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.

2.2.2. CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.

2.2.2.1. State of Arizona Participating Addendum and Exhibits A, B, and C;

2.2.2.2. Master Agreement including all Addendums, in the order of precedence stated therein.

2.2.3. ATTACHMENTS AND EXHIBITS. For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Offeror data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

2.3. Independent Contractor Contractor is an independent contractor and shall act in an independent capacity in performance under the Contract. Neither party is or is to be construed as being to be the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.

2.4. Complete IntegrationThe Contract, including any documents incorporated into the Contract by reference, is intended by the parties as a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract.

3. Contract Administration and Operation

3.1. Term of MPA will commence on the date indicated on the Execution page of the Participating Addendum and continue for twelve (12) months unless cancelled, terminated, or permissibly extended.

3.2. MPA Contract Extensions State may at its discretion extend the initial MPA term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term as set forth in the MA.

3.3. Notices and Correspondence

3.3.1. TO CONTRACTOR. State shall:

3.3.1.1. address all Contract correspondence other than formal notices to the email address indicated in the State's e-Procurement System Vendor Profile; and

3.3.1.2. address any required notices to Contractor to the "Contact Name and Title" at the "Mailing Address" indicated in this MPA, as that address might have been amended during the term of the Contract.

3.3.2. TO STATE. Contractor shall :

3.3.2.1. address all Contract correspondence other than format notices to the email address indicated in "Contact Instructions" in the The State's e-Procurement System Summary for State; and

3.3.2.2. address any required notices to State to Procurement Officer identified as "Contract Owner" in the State's e-Procurement System Summary at the following mailing address:

Arizona Department of Administration
State Procurement Office
100 N 15th Ave., Suite 305
Phoenix, AZ 85007

3.3.3. CHANGES. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address by Contract Amendment.

3.4. Signing of Contract Amendments

3.4.1. Contractor's counter-signature – or "approval" in The State's e-Procurement System, in the case of an amendment – is not required to give effect if the Contract Amendment only covers either:

3.4.1.1. extension of the term of the Contract within the maximum aggregate term;

3.4.1.2. revision to Procurement Officer appointment or contact information; or

3.4.1.3. modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

3.4.2. In every case other than those listed in (3.4.1.1), (3.4.1.2), and (3.4.1.3) above, both parties' signature – or "approval" in The State's e-Procurement System, in the case of an Amendment – are required to give it effect.

3.5. Click Through Terms and Conditions

If either party uses a web based ordering system, an electronic purchase order system, an electronic

order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an “Electronic Ordering System”), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6. Books and Records

- 3.6.1. RETAIN RECORDS. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating for any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.
- 3.6.2. RIGHT TO AUDIT. The retained books and records are subject to audit by State during that period. By A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.
- 3.6.3. AUDITING. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7. Contractor Licenses

Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the Work itself.

3.8. Inspection and Testing

By A.R.S. § 41-2547, State may at reasonable times inspect the part of Contractor’s or Subcontractors’ plant or places of business related to performance under the Contract. Accordingly, Contractor agrees to permit (for itself) and ensure (for Subcontractors) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, work-in-progress, components, or unfinished materials that are to be supplied under the Contract or

that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Contractor will owe State reimbursement or payment of all costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, work, components, or unfinished materials will of itself constitute acceptance by State of those things.

3.9. Ownership of Intellectual Property

3.9.1. **RIGHTS IN WORK PRODUCT.** All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor's administrative communications and records relating to the Contract, are considered work product and Contractor's property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.

3.9.1.1. "Government Purpose Rights" are:

- 3.9.1.1.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and create derivatives from that work product without restriction for any activity in which State is a party;
- 3.9.1.1.2. the right to release or disclose that work product to third parties for any State government purpose; and
- 3.9.1.1.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

3.9.1.2. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from, or disclose that work product for any commercial purpose or to authorize others to do so.

3.9.2. **JOINT DEVELOPMENTS.** The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.3. **PRE-EXISTING MATERIAL.** All pre-existing software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or

applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:

- 3.9.3.1. any derivative works of such pre-existing material or elements thereof that are created pursuant to the Contract are part of that work product;
- 3.9.3.2. any elements of derivative work of such pre-existing material that was not created pursuant to the Contract are not part of that work product; and
- 3.9.3.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing materials.

- 3.9.4. DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the Contract does not preclude Contractor from developing competing materials outside the Contract, irrespective of any similarity to materials delivered or to be delivered to State hereunder.

3.10. Subcontracts

- 3.10.1. INITIAL LIST. At the time of the Utah's Master Contract execution, Contractor's candidate Subcontractors were to be identified. Agreeing to them being included in the Accepted Offer signified Procurement Officer's advance consent for Contractor to enter into a Subcontract with each candidate, which Contractor shall do as promptly as necessary to ensure its ability to carry out the Work in a timely manner.
- 3.10.2. ADDITIONAL NAMES. Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor that
 - 3.10.2.1. was not identified at the time of the MMCAP Infuse Master Contract execution or
 - 3.10.2.2. for any Materials or Services categories other than the ones for which they were previously consented.
 - 3.10.2.3. For either case (3.10.1.1.) or (3.10.1.2.), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.

3.10.3. FLOW-DOWN. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.

3.11. Offshore Performance of Certain Work Prohibited

Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Work, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.

3.12. Orders

3.12.1. ORDER SUFFICIENCY. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize Contractor to provide the Materials and perform the Services covered by that Order.

3.12.2. ORDER TERMS. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions.

3.12.3. ORDERS ARE OBLIGATORY. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.12.4. SPECIAL CASE. In the special case where both the following conditions are true, Procurement Officer's signature on the Acceptance is Contractor's authorization to perform and therefore no Order is required:

3.12.4.1. the Contract is identified as being a "single-agency/single-project" contract and

3.12.4.2. the Contract was created in The State's e-Procurement System as something other than a "Master/ Blanket" type.

3.12.5. NO MINIMUMS OR COMMITMENTS

3.12.5.1. Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders;

3.12.5.2. State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract;

3.12.5.3. Contractor shall only deliver or perform as authorized by Orders; and

3.12.5.4. State is not limited as to the number of Orders it may issue for the Contract.

3.12.5.5. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co Op Buyer issues it.

3.12.6. NON-CONTRACTED MATERIALS OR SERVICES. Any attempt to knowingly represent for sales, marketing, or related purposes that goods or services not specifically awarded are under a State contract is a violation of the Contract and law.

3.13. Provisions for Statewide Contracts: Co-Op Usage; Eligible Agencies; and Quarterly Reporting

3.13.1. The Contract is a "statewide" contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a "statewide" contract hereunder.

3.13.2. The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a "delivery order" sub type of ID/IQ contract to the extent the Work is Materials, and a "task order" sub-type to the extent the Work is Services.

3.13.3. Co-Op Usage

3.13.3.1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/procurement-services/cooperative-procurement/state-purchasing-cooperative>

3.13.3.2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the

sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed

or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

- 3.13.3.3. Contractor shall pay State an administrative fee against all Contract sales to Co Op Buyers, as provided for under A.R.S. § 41 2633. The fee rate is one (0%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

- 3.13.3.4. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

3.13.4. Eligible Agencies – Orders

- 3.13.4.1. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either:

3.13.4.1.1. "Approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or,

3.13.4.1.2. "Rejecting" the Order electronically in The State's e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which Contractor may reject or refuse an Order are those set out in subparagraph 3.14.3 (Orders are Obligatory).

- 3.13.4.2. Unless and until Contractor has approved the Order in the State's e-Procurement System, it will have no effect under the Contract and will not oblige either State or

Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically In The State's e-Procurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.

3.13.5. Quarterly Usage Reports

Contractor shall submit to State a Quarterly Usage Report documenting all Contract sales to both Eligible Agencies and Co Op Buyers, itemized separately. A Quarterly Usage Report shall still be submitted, even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee>

3.14. Multiple-Use Provisions

3.14.1. Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a "Release Purchase Order" in The State's e-Procurement System. Orders issued by Co Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:

- 3.14.1.1. By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Pricing Document, then preparing an Order using those prices (e.g., filling out an order form), and sending it to Contractor.
- 3.14.1.2. By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement.
- 3.14.1.3. As described in (3.14.1.2.) above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and

locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State.

3.14.1.4. As described in (3.14.1.3.) above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

3.14.2. When evaluating the proposals under (3.14.1.3) and (3.14.1.4) above, State may select based on price (for example, a quoted number of hours times the contracted or improved rate plus a fixed amount for incidentals), by experience and qualifications (for example, having an office nearer the required work location), or whatever combination thereof it determines is most appropriate to the work in question.

3.15. Other Contractors

State may undertake with its own forces or award other contracts to the same or other vendors for additional or related work. In such cases, Contractor shall cooperate fully with State's employees and such other vendors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor's work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, services, or records to State or the other vendors. Contractor shall not commit or permit any act that interferes with the State's or other vendors' performance of their work, provided that, State shall enforce the foregoing section equitably among all its vendors so as not impose an unreasonable burden on any one of them.

3.16. Work on State Premises

3.16.1. COMPLIANCE WITH RULES

Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.

3.16.2. PROTECTION OF GROUNDS AND FACILITIES

Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements and do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

4. Costs and Payments

4.1. Payments

4.1.1. PAYMENT DEADLINE. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Document, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true:

4.1.1.1. all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and

4.1.1.2. Contractor has provided a complete and accurate invoice in the form and manner called for in the Pricing Document, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in The State's e-Procurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.

4.1.2. PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier indicated in the States E-procurement System.

4.2. Applicable Taxes

4.2.1. CONTRACTOR TO PAY ALL TAXES. State is subject to Arizona TPT. Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer (as buyer) will not relieve Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the Pricing Document, all prices therein include Arizona TPT as well as every other manner of

transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

- 4.2.2. TAX INDEMNITY. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.

5. Contract Changes

5.1. Contract Amendments

The Contract is issued for State under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope. Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Contractor will be void and without effect; Contractor will not be entitled to any claim made under the Contract based on any such purported changes.

5.2. Assignment and Delegation

- 5.2.1. IN WHOLE. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State

satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.

- 5.2.2. IN PART. Subject to paragraph 3.10 [Subcontracts] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or laws.

6. Risk and Liability

6.1. Risk of Loss

Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

6.2. Contractor Insurance

- 6.2.1. Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.
- 6.2.2. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage personal injury and broad form contractual liability coverage

General Aggregate	\$1,000,000
Products – Completed Operations Aggregate	\$10,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include

the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor, involving automobiles owned, leased, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. Worker’s Compensation and Employers’ Liability

Workers’ Compensation.....	Statutory
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. 23-901, and when such contractor or subcontractor executes the appropriate waiver form (Sole Proprietor/Independent Contractor).

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 E
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to State Procurement Office.

ACCEPTABILITY OF INSURERS: Contractor's Insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to , commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All such certificates required by this Contract shall be sent directly to the Arizona State Procurement Officer as listed in the E-procurement system by email. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insured under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

APPROVAL and MODIFICATIONS: The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverage's, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of self-insurance. If the Contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

6.3. Indemnification

- 6.3.1. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or

omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnification will survive the termination of the above listed contract with the Contractor.

- 6.3.2. This indemnity shall not apply if the Contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.4. Patent and Copyright Indemnification

- 6.4.1. CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

- 6.4.1.1. State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;
- 6.4.1.2. Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;
- 6.4.1.3. State may elect to participate in such action at its own expense; and
- 6.4.1.4. State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

- 6.4.2. If Contractor is a public agency, this paragraph 6.4 does not apply.

6.5. Force Majeure

- 6.5.1. DEFINITION. For this paragraph, "force majeure" means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party's fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood,

lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 7.66 [Performance in Public Health Emergency], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

- 6.5.2. RELIEF FROM PERFORMANCE. Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are

on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.

- 6.5.3. EXCUSABLE DELAY IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

- 6.5.4. DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

6.6. Third Party Antitrust Violations

Contractor assigns to State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to Contractor toward fulfillment of the Contract.

7. Warranties

7.1. Conformity to Requirements

7.1.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for 1 (one) year after acceptance and in each instance:

- 7.1.1.1. conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, drawings identified, and any Contractor affirmations included as part of the Contract;
- 7.1.1.2. be free from defects of material and workmanship;
- 7.1.1.3. conform to or perform in a manner consistent with current industry standards; and
- 7.1.1.4. be fit for the intended purpose or use described in the Contract.

7.1.2. Mere delivery or performance does not substitute for express acceptance by State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation, the forgoing warranty will not begin until State's acceptance.

7.2. Contractor Personnel

Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.3. Intellectual Property

Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.

7.4. Licenses and Permits

Contractor warrants that it will maintain all licenses required under paragraph 3.7 [Contractor Licenses] and all required permits valid and in force.

7.5. Operational Continuity

Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor's duties hereunder absent a consented delegation under paragraph 5.2 [Assignment and Delegation] that expressly recognizes the event.

7.6. Performance in Public Health Emergency

7.6.1. Contractor warrants that it will:

- 7.6.1.1. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
 - 7.6.1.1.1. identification of response personnel by name;
 - 7.6.1.1.2. key succession and performance responses in the event of sudden and significant decrease in workforce; and
 - 7.6.1.1.3. alternative avenues to keep sufficient product on hand or in the supply chain; and
 - 7.6.1.1.4. provide a copy of its current plan to State within 3 (three) business days after State's written request. If Contractor claims relief under paragraph 6.5 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

- 7.6.2. For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

7.7. Lobbying

7.7.1. PROHIBITION.

7.7.1.1. Contractor warrants that:

- 7.7.1.1.1. it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and

7.7.1.1.2. upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety.

7.7.1.2. Contractor shall implement and maintain adequate controls to assure compliance with above.

7.7.1.3. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.7.2. EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.8. Survival of Warranties

All representations and warrants made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

8. State's Contractual Remedies

No modifications to uniform terms and conditions section

9. Contract Termination

No modifications to uniform terms and conditions section

10. Contract Claims

10.1. Claim Resolution

Notwithstanding any law to the contrary, all contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder, including judicial review under A.R.S. § 12-1518.

10.2. Mandatory Arbitration

In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements.

11. General Provisions for Materials

11.1. Applicability

Article 11 applies to the extent the Work is or includes Materials.

11.2. Off-Contract Materials

Contractor shall ensure that the design and/or procedures for the Materials ordering method

prevents Orders for off-contract items or excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders, State may, at its discretion, return any such items under subparagraph 11.17 or cancel any such Order under subparagraph 11.18, neither case being without obligation and at Contractor's expense. As used above, "off-contract item" refers to any product not included in the scope of the Contract and for which no price or compensation has been established contractually, and "excluded item" refers to any product expressly stated in the Contract as being excluded from the Contract.

11.3. Compensation for Late Deliveries

Contractor shall have clear, published policies in place regarding late delivery, order cancelation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them.

Indicate Shipping Costs on Order

Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one)

11.4. Current Products

Contractor shall keep all products being offered under the Contract:

11.4.1. in current and ongoing production;

11.4.2. in its advertised product lines;

11.4.3. as models or types that are actively functioning in other paying customer environments; and

11.4.4. in conformance to the requirements of the Contract

11.5. Maintain Comprehensive Selection

Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Commercial Document for ordering by Eligible Agencies, and Co Op Buyers if applicable.

11.6. Additional Products

11.6.1. State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include:

- 11.6.1.1. documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and
- 11.6.1.2. documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of this typically requires showing how prices at which sales are currently or were last made to a significant number of buyers compare to the prices or discounts (as applicable) being proposed for the additional products

11.7. Discontinued products

11.7.1. If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within 5 (five) business days after receiving the manufacturer's notification. State, at its discretion, will either allow Contractor to provide substitutes for the discontinued products or delete the products, both of which will be accomplished by Contract Amendment. Contractor shall then update all applicable catalogs and price lists and make them available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products if no agreement is reached on substitute pricing in a timely manner. When notifying State of the discontinuance, Contractor shall provide:

- 11.7.1.1. manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number;
- 11.7.1.2. documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and

- 11.7.1.3. documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.

11.8. Forced Substitutes

Forced substitutions will not be permitted; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

11.9. Recalls

In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, "recalls" hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product.

Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall

11.10. Delivery

11.10.1. PRICING. Unless stated otherwise in the Commercial Document, all Materials prices set forth therein are FCA (seller's dock) Incoterms®2010, with "seller's dock" meaning the last place of manufacturing, assembly, integration, final packing, or warehousing before departure to designated point of delivery to State. For reference, the foregoing is to be construed as equivalent to "F.o.b. Origin, Contractor's Facility" under [FAR 52.247-30](#)

11.10.2. LIABILITY. Unless stated otherwise in the Commercial Document or an Order, Contractor's liability for all Materials is DDP (State-designated receiving point per Order) Incoterms®2010, but with unloading at destination included. For reference, the foregoing is to be construed as equivalent to "F.o.b. Destination, Within Consignee's Premises" under [FAR 52.247-35](#).

11.10.3. PAYMENT. Unless stated otherwise in the Commercial Document or an Order, State shall reimburse Contractor the costs of the difference between DDP (State-designated receiving point per Order) and FCA (seller's dock) with no mark-up, which Contractor shall itemize and invoice separately

11.11. Delivery Time

Unless stated otherwise in the Commercial Document generally or in the applicable Order particularly, Contractor shall make delivery within 2 (two) business days after receiving each Order

11.12. Delivery Locations

Contractor shall offer deliveries to every location served under the scope of the Contract, specifically

- 11.12.1. if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
- 11.12.2. if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency's location in Arizona;
- 11.12.3. if the Contract is for statewide use but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
- 11.12.4. if the Contract is for unrestricted statewide use, then:
 - 11.12.4.1. Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
 - 11.12.4.2. If a prospective Co Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
 - 11.12.4.3. if the Commercial Document indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.

11.13. Conditions at Delivery Location

Contractor shall verify receiving hours and conditions (i.e. height/weight restrictions, access control, etc.) with the relevant purchaser for the receiving site before scheduling or making a delivery. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the verification or comply with the applicable conditions. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most-current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late delivery if Contractor has failed to make the confirmation or comply with the applicable conditions

11.14. Materials Acceptance

State has the right to make acceptance of Materials subject to a complete inspection on delivery and installation, if installation is Contractor's responsibility. State may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. Contractor shall remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. State will not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.

11.15. Correcting Defects

Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.

11.15.1. Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.

11.15.2. If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

11.15.3. Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State's discretion in each instance, provided that, State shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.

11.16. Returns

State may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within thirty (30) days after receipt. If State elects to return delivered Materials, then State shall pay all freight, delivery, and transit insurance costs to return the products to the place from which Contractor shipped them, provided that, if State returns delivered Materials because they are defective or non-conforming or for any other reason

having to do with Contractor fault or error, then State will not be responsible for paying freight, delivery, or transit insurance costs to return the products and may, at its discretion, either have those billed directly to Contractor or offset them under paragraph 8.5 [Right of Offset] of the Uniform Terms and Conditions.

11.17. Order Cancellations

11.17.1. State may cancel orders within a reasonable period after issuance and at its discretion. The same method as that used for ordering will be used for cancellation. If State cancels an Order, then State shall:

11.17.1.1. pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date plus one (1) additional business day

11.17.1.2. reimburse Contractor for:

11.17.1.2.1. its actual, documented costs incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day;

11.17.1.2.2. the cost of any obligations it incurred in fulfilling the Order up to the cancellation effective date plus one (1) additional business day that demonstrably cannot be canceled, or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question;

11.17.1.3. Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice.

11.17.2. By way of reminder, State is not liable for any products that were produced, shipped, or delivered or any services that were performed before Contractor had acknowledged the corresponding Order

11.18. Product Safety

Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Contractor to deliver only products that are already safe and compliant.

11.19. Hazardous Materials

Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard

communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with, to the extent it they are Contractor's responsibility under the Contract, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is:

- 11.19.1. identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or
- 11.19.2. subject to statutory or regulatory requirement governing special handling, disposal or cleanup

12. General Provisions for Services

12.1. Applicability

Article 12 applies to the extent the Work is or includes Services.

12.2. Comprehensive Services Offering

Contractor shall provide the comprehensive range of services for which a price is established in the Pricing Document for ordering by Eligible Agencies, and Co Op Buyers if co op buying applies.

12.3. Additional Services

State at its discretion may modify the range of services by Contract Amendment to include additional services or service categories that are within the general scope of the ones originally covered by the Contract if it determines that doing so is in its best interest. Once the Contract Amendment is fully executed, Contractor shall then update all applicable price lists and make them available to all affected entities at no additional cost. Either party may make the request to add services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional services, but State may elect not to add some or all of the services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request must include documentation demonstrating that the proposed price for the additional services is both fair and reasonable and comparable to the original ones.

12.4. Off-Contract Services

Contractor shall ensure that the design and/or procedures for the Services ordering method prevents Orders for off-contract or excluded services. Notwithstanding that State might have its own internal administrative rules regarding off contract or excluded service ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation. As used above, “off-contract service” refers to any service not included in the scope of the Contract and for which no price or compensation has been established contractually, and “excluded service” refers to any service expressly excluded from the scope of the Contract.

12.5. Removal of Personnel

Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion and without the obligation to demonstrate cause instruct Contractor to remove any of its personnel from State’s facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities.

12.6. Transitions

During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State’s operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State’s representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor.

As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

12.7. Accuracy of Work

Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

12.8. Requirements at Services Location

Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order (if applicable). Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes. Additionally, if performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Contractor has failed to make the confirmation or comply with the applicable conditions.

12.9. Services Acceptance

State has the right to make acceptance of Services subject to acceptance criteria. State may apply as acceptance criteria conformity to the Contract, accuracy, completeness, or other indicators of quality or other matter for which the Contract or law states a requirement, whether stated directly or by reference to another document, standard, reference specification, etc. State will not owe Contractor any payment for un-accepted Services; and State may, at its discretion, withhold or make partial payment for any rejected Services if Contractor is still in the process of re-performing or otherwise curing the grounds for State's rejection.

12.10. Corrective Action Required

Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, if Contractor fails to perform any material portion of the Services, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

- 12.10.1. Contractor shall provide to State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).
- 12.10.2. State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any corrections State instructs and adopt State's recommendations so far as is commercially practicable, provided that State may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment.

- 12.10.3. Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances.

13. Data and Information Handling

13.1. Applicability

- 13.1.1. Article 13 applies to the extent the Work includes handling of any:
 - 13.1.1.1. State's proprietary and sensitive data or
 - 13.1.1.2. confidential or access-restricted information obtained from State or from others at State's behest.

13.2. Data Protection and Confidentiality of Information

- 13.2.1. Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

- 13.2.1.1. Contractor shall:

- 13.2.1.1.1. notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse;
 - 13.2.1.1.2. cooperate with State to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and
 - 13.2.1.1.3. notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

- 13.2.1.2. Contractor shall not:

- 13.2.1.2.1. release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or

13.2.1.2.2. respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

13.3. Personally Identifiable Information.

13.3.1. Without limiting the generality of paragraph 13.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees' or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:

13.3.1.1. PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information", January 3, 2017; and

13.3.1.2. "protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information.

NOTE (1): For convenience of reference only, the OMB memorandum is available at:

<https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

NOTE (2): For convenience of reference only, the GSA directive is available at:

<http://www.gsa.gov/portal/directive/d0/content/658222>

13.4. Protected Health Information

13.4.1. Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:

13.4.1.1. is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection:

13.4.1.1.1. the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996;

- 13.4.1.1.2. Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and
- 13.4.1.1.3. State's current and published PHI/ePHI privacy and security policies and procedures;
- 13.4.1.2. will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (13.4.1.1.) above; and
- 13.4.1.3. will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (13.4.1.1.) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at:

<http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

14. Information Technology Work

14.1. Applicability

Article 14 applies to any Invitation for Bids, Request for Proposals, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6) 6: " . . . computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.

14.2. Background Checks

Each of Contractor's personnel who is an applicant for an information technology position must undergo the security clearance and background check procedure, which includes fingerprinting, as required by A.R.S § 41-710. Contractor shall obtain and pay for the security clearance and background check. Contractor personnel who will have administrator privileges on a State network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.

14.3. Information Access

14.3.1. SYSTEM MEASURES.

Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or

networks containing or transmitting State's proprietary data or confidential information.

14.3.2. INDIVIDUAL MEASURES.

Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Contractor is responsible to State for ensuring that any State access IDs and passwords are used only by the person to whom they were issued. Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.

14.3.3. ACCESS CONTROL.

Contractor is responsible to State for ensuring that hardware, software, data, information, and that has been provided by State or belongs to or is in the custody of State and is accessed or accessible by Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. State may restrict access by Contractor personnel, or instruct Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.

14.4. Pass-Through Indemnity

14.4.1. INDEMNITY FROM THIRD PARTY.

For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to State such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with State in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Contractor is required to do by the Uniform Terms and Conditions, then Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.

14.4.2. NOTIFY OF CLAIMS. State shall notify Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Contractor, with reasonable consultation from State, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:

- 14.4.2.1. State reserves the right to elect to participate in the action at its own expense;
- 14.4.2.2. State reserves the right to approve or reject any settlement or compromise on reasonable grounds and if done so timely; and
- 14.4.2.3. State shall in any case cooperate in the defense and any related settlement negotiations.

14.5. Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.6. Redress of Infringement

- 14.6.1. REPLACE, LICENSE, OR MODIFY. If Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Contractor shall at its sole cost and expense and in consultation with State either:
 - 14.6.1.1. replace any infringing items with non-infringing ones;
 - 14.6.1.2. obtain for State the right to continue using the infringing items; or
 - 14.6.1.3. modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.
- 14.6.2. CANCELLATION OPTION. In every case under, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, State may cancel the relevant Order or terminate the Contract and Contractor shall take back the infringing items. If State does cancel the Order or terminate the Contract, Contractor shall refund to State:
 - 14.6.2.1. for any software created for State under the Contract, the amount State paid to Contractor for creating it;
 - 14.6.2.2. for all other Materials, the net book value of the product provided according to generally accepted accounting principles; and
 - 14.6.2.3. for Services, the amount paid by State or an amount equal to 12 (twelve) months of charges, whichever is less.

14.6.3. EXCEPTIONS. Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:

- 14.6.3.1. modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor;
- 14.6.3.2. operation of Materials with any operating software other than that supplied by Contractor or authorized or proposed by a Contractor Indemnitor; or
- 14.6.3.3. combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Contractor Indemnitor.

14.7. First Party Liability Limitation

14.7.1. LIMIT. Subject to the provisos that follow below and unless stated otherwise in the Special Terms and Conditions, State's and Contractor's respective first party liability arising from or related to the Contract is limited to the greater of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.

14.7.2. PROVISOS. This paragraph 14.7 limits liability for first party direct, indirect, incidental, special, punitive, and consequential damages relating to the Work regardless of the legal theory under which the liability is asserted. This paragraph 14.7 does not limit liability arising from any:

- 14.7.2.1. Indemnified Claim against which Contractor has indemnified State Indemnitees under paragraph 6.3;
- 14.7.2.2. claim against which Contractor has indemnified State Indemnitees under paragraph 6.4; or
- 14.7.2.3. provision of the Contract calling for liquidated damages or specifying amounts or percentages as being at-risk or subject to deduction for performance deficiencies.

14.7.3. PURCHASE PRICE DETERMINATION.

If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.7.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all Contract Amendments having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.

14.7.4. NO EFFECT ON INSURANCE.

This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Contractor is required by the Contract to provide, and Contractor shall obtain express endorsements that it does not.

14.8. Information Technology Warranty

14.8.1. SPECIFIED DESIGN. Where the Scope of Work for information technology Work provides a detailed design specification or sets out specific performance requirements, Contractor warrants that the Work will provide all functionality material to the intended use stated in the Contract, provided that, the foregoing warranty does not extend to any portions of the Materials that are:

14.8.1.1. modified or altered by anyone not authorized by Contractor to do so;

14.8.1.2. maintained in a way inconsistent to any applicable manufacturer recommendations; or

14.8.1.3. operated in a manner not within its intended use or environment.

14.8.2. COTS SOFTWARE. With respect to Materials provided under the Contract that are commercial-off-the-shelf (COTS) software, Contractor warrants that:

14.8.2.1. to the extent possible, it will test the software before delivery using commercially available virus detection software conforming to current industry standards;

14.8.2.2. the COTS software will, to the best of its knowledge, at the time of delivery be free of viruses, backdoors, worms, spyware, malware, and other malicious code that could hamper performance, collect unlawfully any personally

14.8.2.3. identifiable information, or prevent products from performing as required by the Contract; and

14.8.2.4. it will provide a new or clean install of any COTS software that State has reason to believe contains harmful code.

14.8.3. PAYMENT HAS NO EFFECT.

The warranties in this paragraph are not affected by State's inspection, testing, or payment.

14.9. Specific Remedies

Unless expressly stated otherwise elsewhere in the Contract, State's remedy for breach of warranty

under paragraph 14.8 includes, at State's discretion, re performance, repair, replacement, or refund of any amounts paid by State for the nonconforming Work, plus (in every case) Contractor's payment of State's additional, documented, and reasonable costs to procure materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability in paragraph 14.7. If none of the foregoing options can reasonably be effected, or if the use of the materials by State is made impractical by the nonconformance, then State may seek any remedy available to it under law.

14.10. Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.11. Cloud Applications

14.11.1. The following are required for Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

14.11.1.1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.

14.11.1.2. State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.

14.11.1.3. Contractor must submit copy of system logs from cloud system to **State of Arizona** security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

14.11.2. Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

END OF ATTACHMENT A: SPECIAL TERMS AND CONDITIONS

STATE OF ARIZONA UNIFORM TERMS AND CONDITIONS

1. Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

- 1.1. "Attachment" means any item the solicitation requires the Offeror to submit as part of the Offer.
- 1.2. "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. "Contractor" means any Person who has a Contract with the State.
- 1.5. "Days" means calendar days unless otherwise specified.
- 1.6. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. "Services" has the meaning given in A.R.S. § 41-2503(35), which, for convenience of reference only, is "... the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in paragraph 1.8.
- 1.11. "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.12. "State Fiscal Year" means the period beginning with July 1 and ending June 30.

- 1.13. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

2. Contract Interpretation

2.1. Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

- 2.3. Contract Order of Precedence In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- 2.3.1. Special Terms and Conditions;
- 2.3.2. Uniform Terms and Conditions;
- 2.3.3. Statement or Scope of Work;
- 2.3.4. Specifications;
- 2.3.5. Attachments;
- 2.3.6. Exhibits;
- 2.3.7. Documents referenced or included in the Solicitation.

2.4. Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain

any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices

Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the

Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10. E-Verify Requirements

In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11. Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes.

The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification.

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

4.3.4. IRS W9 Form.

In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law

4.4. Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements

5. Contract Changes

5.1. Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency)

The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language

Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification – Patent and Copyright

The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure

6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war;

riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or 6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for

one year after acceptance by the State of the materials, they shall be:

- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the materials are used;
- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness

The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance with Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders.

The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order

- 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender Materials or services supplied under this Contract

All materials and services shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset

The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interests

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted

before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default

- 9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

END OF ATTACHMENT B: UNIFORM TERMS AND CONDITIONS

Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the “Exempt Solicitation, Contract, or Contractor” option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts “unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.”

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 *et seq.*, all offerors must select one of the following:

- ☐ The Company submitting this Offer **does not** participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 *et seq.*

I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

- ☐ The Company submitting this Offer **does** participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq.*
- ☐ **Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

- ☐ Solicitation or Contract has an estimated value of less than \$100,000;
- ☐ Contractor is a sole proprietorship;
- ☐ Contractor has fewer than ten (10) employees; and/or
- ☐ Contractor is a non-profit organization.

Company Name

Signature of Person
Authorized to Sign

Address

Printed Name

City

State

Zip

Title

END OF ATTACHMENT C: BOYCOTT OF ISRAEL

State of Utah Terms

Changes to Master Agreement

State-Specific Constitutional, Statutory and Other Requirements

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for services (including professional services), meaning the furnishing of labor, time, or effort by a contractor. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
 - b) **"Contract"** means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor sign.
 - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) **"Division"** means the State of Utah Division of Purchasing.
 - g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but are not limited to, all of the deliverable(s) and Custom Deliverable that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - j) **"Proposal"** means Contractor's response to the Division's Solicitation.
 - k) **"Solicitation"** means the documents used by the Division to obtain Contractor's Proposal.
 - l) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - n) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the Division, Eligible Users, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being

given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for Services properly performed prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.

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

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

14. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

15. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

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

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

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

16. **RESERVED.**

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

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

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
25. **ORDERING:** Orders will be placed by the Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
26. **ACCEPTANCE AND REJECTION:** The Eligible User shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Eligible User.
If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return any deliverable related to the Services for a full refund; (ii) require Contractor to promptly correct or reperform

the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

27. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Service(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
28. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor. The State of Utah, the Division, and the Eligible User will not allow the Contractor to charge end users electronic payment fees of any kind.
29. **TIME IS OF THE ESSENCE:** Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.
30. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
31. **PERFORMANCE EVALUATION:** The Eligible User may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
32. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Eligible User and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
33. **REVIEWS:** The Division and Eligible Users reserve the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible User, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Services, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract, shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
36. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,

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

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

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

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

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

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

39. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.

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

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

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

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

42. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce

Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.

43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
46. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
47. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); (v) Contractor's terms and conditions that are attached to this Contract, if any; and (vi) Contractor's attachments, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.
48. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.
49. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
50. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
51. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

CONTROL	Control Name CONTROL ENHANCEMENT NAMES (are in caps)				Applicability		Location (in relation to Agency)		Proposer Response							
									Requirement Implemented by			Vendor Control is:				
					All	Moderate	On Premise	Off Premise	Agency	Vendor	Shared (agency/vendor)	Base	Add-on	Third Party	Not supported	
Governance																
PM-1	Information Security Program Plan															
		PM-4		Plan of Action and Milestones Process	X											
		PM-5		System Inventory	X											
PL-1	Planning Policy and Procedures															
		PL-2		System Security and Privacy Plans	X											
			PL-2(3)	PLAN AND COORDINATE WITH OTHER ORGANIZATIONAL ENTITIES		X										
		PL-4		Rules of Behavior	X											
			PL-4(1)	SOCIAL MEDIA AND NETWORKING RESTRICTIONS	X											
		PL-8		Security and Privacy Architectures	X											
		PL-10		Baseline Selection	X											
		PL-11		Baseline Tailoring	X											
Risk																
RA-1	Risk Assessment Policy and Procedures															
		RA-2		Security Categorization	X											
		RA-3		Risk Assessment	X											
			RA-3(1)	SUPPLY CHAIN RISK ASSESSMENT		X										
		RA-5		Vulnerability Scanning	X											
			RA-5(2)	UPDATE BY FREQUENCY, PRIOR TO NEW SCAN, OR WHEN IDENTIFIED	X											
			RA-5(5)	PRIVILEGED ACCESS		X										
		RA-7		Risk Response	X											
		RA-9		Criticality Analysis		X										
Compliance																
AU-1	Audit and Accountability Policy and Procedures															
		AU-2		Audit Events	X											
			AU-2(3)	REVIEWS AND UPDATES		X										
		AU-3		Content of Audit Records	X											
			AU-3(1)	ADDITIONAL AUDIT INFORMATION		X										
		AU-4		Audit Storage Capacity	X											
		AU-5		Response to Audit Processing Failures	X											
			AU-5(1)	AUDIT STORAGE CAPACITY		X										
		AU-6		Audit Review, Analysis, and Reporting	X											
			AU-6(1)	AUTOMATED PROCESS INTEGRATION		X										
			AU-6(3)	CORRELATE AUDIT REPOSITORIES		X										
			AU-6(4)	CENTRAL REVIEW AND ANALYSIS		X										

[illegible]

CONTROL				Control Name CONTROL ENHANCEMENT NAMES (are in caps)	Applicability		Location (in relation to Agency)		Proposer Response						
									Requirement Implemented by			Vendor Control is:			
					All	Moderate	On Premise	Off Premise	Agency	Vendor	Shared (agency/vendor)	Base	Add-on	Third Party	Not supported
			AC-2(13)	DISABLE ACCOUNTS FOR HIGH-RISK INDIVIDUALS		X									
		AC-3		Access Enforcement	X										
			AC-3(7)	ROLE-BASED ACCESS CONTROL		X									
		AC-4		Information Flow Enforcement	X										
		AC-5		Separation of Duties		X									
		AC-6		Least Privilege	X										
			AC-6(1)	AUTHORIZE ACCESS TO SECURITY FUNCTIONS	X										
			AC-6(2)	NON-PRIVILEGED ACCESS FOR NONSECURITY FUNCTIONS	X										
			AC-6(5)	PRIVILEGED ACCOUNTS	X										
			AC-6(7)	REVIEW OF USER PRIVILEGES	X										
			AC-6(9)	AUDITING USE OF PRIVILEGED FUNCTIONS	X										
			AC-6(10)	PROHIBIT NON-PRIVILEGED USERS FROM EXECUTING PRIVILEGED FUNCTIONS	X										
		AC-7		Unsuccessful Logon Attempts	X										
			AC-7(2)	PURGE OR WIPE MOBILE DEVICE	X										
		AC-8		System Use Notification	X										
		AC-11		Device Lock	X										
			AC-11(1)	PATTERN-HIDING DISPLAYS	X										
			AC-11(2)	REQUIRE USER-INITIATED LOCK	X										
		AC-12		Session Termination		X									
		AC-14		Permitted Actions without Identification or Authentication	X										
		AC-17		Remote Access	X										
			AC-17(1)	AUTOMATED MONITORING AND CONTROL		X									
			AC-17(2)	PROTECTION OF CONFIDENTIALITY AND INTEGRITY USING ENCRYPTION		X									
			AC-17(3)	MANAGED ACCESS CONTROL POINTS		X									
			AC-17(4)	PRIVILEGED COMMANDS AND ACCESS		X									
		AC-18		Wireless Access	X										
			AC-18(1)	AUTHENTICATION AND ENCRYPTION	X										
			AC-18(3)	DISABLE WIRELESS NETWORKING		X									
		AC-19		Access Control for Mobile Devices	X										
			AC-19(5)	FULL DEVICE AND CONTAINER-BASED ENCRYPTION		X									
		AC-20		Use of External Systems	X										
			AC-20(2)	PORTABLE STORAGE DEVICES	X										
			AC-20(3)	NON-ORGANIZATIONALLY OWNED SYSTEMS AND COMPONENTS	X										
		AC-22		Publicly Accessible Content	X										
CM-1	Configuration Management Policy and Procedures														

Revised_Attachment I Cost

Service	Vendor's Fee	Estimated Annual Usage
Full Service Agent fee:		35,000
Online Transaction Fee:		62,000
After Hours Fee:		2,500
Hotel only booking <u>online</u> fee:		74,353
Car rental only <u>online</u> booking fee:		36,000
Hotel and car only <u>Agent Assisted</u> booking fee:		110,431

Additional Services and Cost

[illegible]

