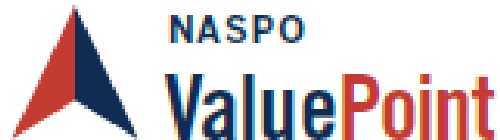




**The State of Minnesota
(Office of State Procurement)**

In conjunction with



Request for Proposal

**The State of Minnesota Solicitation Number
2000008586**

**NASPO ValuePoint Master Agreement for
Public Safety Vehicle Accessories
And LED Emergency Light Bars, Siren
Warning Accessories.**

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RFP Administrative Information

RFP Title:	Minnesota NASPO Master Agreement(s) with qualified manufacturers for: Public Safety Vehicle Accessories And LED Emergency Light Bars, Siren Warning Accessories.
RFP Project Description: (See Section 1.1)	The State of Minnesota in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide LED Emergency Light Bars, Siren Warning Accessories, and Other Related Accessories
RFP Lead: (See Section 1.2)	Dustin Burns Office of State Procurement 50 Sherburne Avenue St. Paul, MN, 5128 dustin.burns@state.mn.us 651.201.2441
Submit electronically via State Wide Integrated Financial Tools (SWIFT): (See Section 2.10)	Electronic Submission https://supplier.swift.state.mn.us/psp/fmssupap/SUPPLIER/ERP/h/?tab=SUP_GUEST
Pre-Proposal Conference: Pre-Proposal Conference Location: (See Section 2.3)	Pre- proposal Conference will be held on Friday, March 15, 2019 1:00 P.M. CT. To attend R.S.V.P to dustin.burns@state.mn.us Webinar/Conference Call
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	Friday, March 22, 2019, 3:00 P.M. CT
Question & Answers: (See Section 2.1)	All questions from prospective responders regarding this solicitation, including those about Terms and Conditions, must be submitted in writing to dustin.burns@state.mn.us no later than Friday, March 22, 2019, 3:00 P.M Central Time.
RFP Closing Date: (See Section 1.3)	Tuesday, April 26, 2019
RFP Closing Time: (See Section 1.3)	3:00 P.M., CENTRAL TIME
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be two (2) years with the option, upon mutual written agreement, for up three years in extension options. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

REQUEST FOR PROPOSAL
Minnesota NASPO Master Agreement(s) with qualified manufacturers for:
Public Safety Vehicle Accessories
And LED Emergency Light Bars, Siren Warning Accessories.

Solicitation # 2000008586

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Minnesota, Office of State Procurement (Lead State) is requesting proposals for LED Light Bars with qualified manufacturers in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide Public Safety Vehicle Accessories and LED Emergency Light Bars, Siren Warning Accessories for all Participating States. The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual chief procurement official and compliance with local statutory and regulatory provisions. The initial term of the master agreement shall be (2) years, with renewal provisions as outlined in Section 3 of the NASPO ValuePoint Master Terms and conditions (Attachment A).

It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, or a single contractor, in the Lead State's discretion.

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

This will be a new solicitation to replace the current LED Emergency Light Bars, Siren Warning Accessories, and Other Related Accessories contract, expiring 7/31/2019 Master Agreement for the State of Minnesota and NASPO ValuePoint.

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

The State of Minnesota, Office of State Procurement is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # 2000008586. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Minnesota, Office of State Procurement is:

Dustin Burns, Buyer III
State of Minnesota, Office of State Procurement
50 Sherburne Avenue 112 Administration building
Saint Paul, Minnesota 55128
dustin.burns@state.mn.us
651.201.2441 651.297.3996

1.3 Schedule of Events

Solicitation Release:	Wednesday, March 6, 2019
Pre-Proposal Conference	Friday, March 15, 2019 1:00 P.M. CT
Question Deadline:	Friday, March 22, 2019, 3:00 P.M. CT
Closing Date and Time:	Tuesday, April 16, 2019, 3:00 P.M. CT

All times are Central Standard Time unless indicated otherwise.

1.4. Definitions

The following definitions apply to this solicitation. Attachment A also contains definitions of terms used in this solicitation and the NASPO ValuePoint Master Agreement terms and conditions.

Lead State: The State conducting this cooperative procurement, evaluation, and award.

Offeror: The company or firm who submits a proposal in response to this Request for Proposal.

Proposer: Has the same meaning as Offeror.

Proposal: The official written response submitted by an Offeror in response to this Request for Proposal.

Request for Proposal or "RFP": The entire solicitation document, including all LED Emergency Light Bars, Siren Warning Accessories, and Other Related Public Safety Vehicle Accessories - page 5

parts, sections, exhibits, attachments, and Addenda.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication.

It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement:

Hawaii	Arizona
South Dakota	Vermont
Oregon	
Montana	
Utah	
Maryland	

Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. States-specific terms and conditions are included in Attachments H-Y.

Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1 RFP Question and Answer Process

All questions from prospective responders regarding this solicitation, including those about Terms and Conditions, must be submitted by the question deadline date and time shown in Section 1.3 (Schedule of Events). Answers will be given via the SWIFT site as soon as possible. All questions received by the cutoff date and time will be responded to via an addendum. Contact regarding this solicitation with any State personnel other than the AMS listed above may result in rejection of the response.

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

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

2.2 RFP Addenda

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

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

2.3 Pre-Proposal Conference

A pre-proposal conference will be held on Friday, March 15, 2019 1:00 P.M, this will be a telephone conference call and Attendance at the conference is optional. Answers to questions asked during the pre-proposal conference will be provided via an addendum posted in (SWIFT).

2.3 Proposal Due Date

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

2.4 Cancellation of Procurement

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

2.5 Governing Laws and Regulations

This procurement is conducted by the Lead State of Minnesota, Office of State Procurement in accordance with the Lead State Procurement Statutes and Rules. These are available at: <https://www.revisor.mn.gov/statutes/cite/16C>

This procurement shall be governed by the regulations and laws of the Lead State. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Minnesota. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.

2.6 Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date.

2.7 Right to Accept All or Portion of Proposal

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

2.8 Proposal Content and Format Requirements

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Scope of Work elements.

2.9 Proposal Submission Instructions

Proposals must be received by the posted Closing date and time. Proposals received after the deadline will be late and rejected.

Non-electronic and e-mail responses WILL NOT BE ACCEPTED. The response must be submitted in the State of Minnesota SWIFT Supplier Portal no later than the date and time called for in the Finish Time in the Event Details, at which time the names of the Responders responding to this RFP will be read. Late responses cannot be considered. The laws of Minn. Stat. Ch. 16C apply to this RFP.

Proposers are solely responsible for ensuring that their Proposals are received by the Lead State in accordance with these solicitation requirements, before the

Closing Date and Time, and at the place specified on the cover sheet of this RFP. The Lead State shall not be responsible for any delays in electronic system, or transmission errors or delays or mistaken systems.

Responses are to be prepared and presented in the same sequential order as the questions and requests for comments are presented in this document. Responses deviating from the RFP format and organization may be removed from further consideration. Responses are expected to provide a straightforward and concise description of the Responder's ability to meet the requirements.

Costs for developing a response to this RFP are entirely the Responder's responsibility and shall not be chargeable to the Lead State of Minnesota or to any agency thereof.

This RFP does not commit the Lead State to award any contract or to pay any costs incurred by the Responders responding. Any materials submitted may be incorporated by reference in the final Contract.

The Lead State reserves the right to accept or reject any or all responses or parts of responses and to waive informalities therein.

All responses must be prepared as stated herein and properly signed. Address all correspondence and inquiries regarding this RFP to the Contract Administrator identified on page nine (9) of this RFP. **THIS IS A REQUEST FOR PROPOSAL; NOT A PURCHASE ORDER.**

- a. **ALTERATIONS.** Any alteration, particularly in the price used to determine the successful response, may be rejected unless the alteration is initialed by the person authorized to contractually obligate the Responder. Proof of authorization shall be provided upon request.
- b. An **AUTHORIZED SIGNATURE** is required. The response must be in the legal name of the firm or business, and must be fully and properly executed and signed by an officer or other authorized representative who shall state his/her title.

Proof of authority of the person signing the response shall be furnished upon request. If the Responder is a corporation, a secretarial certificate of an excerpt of the corporate minutes showing that the signing officer has authority to contractually obligate the corporation shall be furnished. Where the corporation has designated an attorney-in-fact, the ordinary power of attorney should be furnished. If the Responder is a partnership, a letter of authorization shall be furnished, signed by one of the general partners. If the Responder is a proprietor, and the person signing the response is other than the owner, a letter of authorization signed by the owner shall be furnished.

2.10 Required Format

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is contained in later sections of this RFP.

1. **RFP Form.** The Lead State's Request for Proposal form completed and signed.
2. **Executive Summary.** The one or two page executive summary is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. It must indicate any requirements that cannot be met by the Offeror. The Lead State should be able to determine the essence of the Proposal by reading the executive summary.
3. **Technical Response.** This section should constitute the Technical response of the proposal and must contain at least the following information:
 - A. A complete narrative of the Offeror's assessment of the work to be performed, the Offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Offeror's understanding of the desired overall performance expectations and clearly indicate any options or alternatives proposed.
 - B. A specific point-by-point response, in the order listed, to each requirement in the RFP and scope of work.
4. **Confidential, Protected or Proprietary Information.** All confidential, protected or proprietary Information must be included in this section of proposal response. Do not incorporate protected information throughout the Proposal. Rather, provide a reference in the proposal response directing the Lead State to the specific area of this protected Information section.
5. **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Please enumerate all costs on the attached Cost Proposal Form. The Cost Proposal is to be submitted as a separate document. Inclusion of any cost or pricing data within the technical proposal may result in the Proposal being deemed non-responsive.

2.11 Confidential or Proprietary Information

Confidential Information Proposers should be aware that marking any portion of a Proposal as "confidential", "proprietary" or "trade secret" may exclude it from evaluation or consideration for award. In the event that a limited amount of confidential and proprietary information is deemed necessary by the Offeror to respond to solicitation, any such information must be included in a separate section of the Offeror's proposal response clearly marked as "CONFIDENTIAL AND PROPRIETARY INFORMATION". Do not incorporate confidential and proprietary information throughout the proposal response. Rather, provide a reference in the proposal response directing the reader to the CONFIDENTIAL AND PROPRIETARY INFORMATION section. Elements of the proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as confidential and proprietary. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information may be rejected.

Information included in the CONFIDENTIAL AND PROPRIETARY INFORMATION section of an Offeror's proposal is not automatically accepted and protected. All information identified in the CONFIDENTIAL AND PROPRIETARY INFORMATION section will be subject to review by the Lead State in accordance with the procedures prescribed by the Lead State's open records statute, freedom of information act, or similar law.

Redacted Proposal Response

In the event that an Offeror includes a CONFIDENTIAL AND PROPRIETARY INFORMATION section in their proposal response, an electronic redacted copy of the Offeror's proposal (as accepted) must be submitted with the final proposal (e.g. a best and final offer) or as otherwise directed by the Lead State. Offeror acknowledges that any information in the redacted copy of their proposal response will be made public.

2.12 Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to contract terms and conditions in the RFP, attached Participating Entity terms and conditions (if any), and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its sourcing team), the proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception and would require a substantial proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language or any other document contained within this RFP through their written inquiries about the RFP using the process in Section 2.1.

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

2.13 Certification of Non-Debarment

The Offeror certifies that neither the Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the Lead State.

Section 3: Evaluation and Award

Except at the invitation of the Contract Administrator, no activity or comments from Responders regarding this RFP shall be discussed with any of the sourcing team during the Solicitation and the evaluation of the responses. A Responder who contacts a sourcing team member may, as a result, have its response rejected.

3.1 Right to Waive Minor Irregularities

The Lead State in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to corrections of deficiencies or clarification of ambiguities that in the judgment of the Lead State do not require a comprehensive proposal rewrite. The Lead State also reserves the right in its sole discretion to waive certain mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and the failure to do so does not materially affect the procurement.

3.2 Discussions with Offerors – Oral Presentations

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

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

3.3 Award of Master Agreement(s)

Award shall be made to the Offeror(s) whose proposal is the most advantageous to the Minnesota and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this Request for Proposal.

3.4 Evaluation Process

During the evaluation process, all information concerning the responses submitted will remain private and will not be disclosed to anyone whose official duties do not require such knowledge. At any time during the evaluation, the Lead State may request that a Responder provide explicit written clarification to any part of its response.

Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the Lead State having completed negotiating the Contract with the selected vendor. If no award is made the responses are not made public. The Lead State will notify all Responders in writing of the evaluation results.

If only one response is submitted to the Solicitation, the Lead State reserves the right to review the response submitted for compliance and to award without assigning points or to reject the offer and re-issue the Solicitation, whatever is in the Lead State's best interest.

PHASES.

The Lead State shall conduct an evaluation of responses to this RFP. The evaluations will be conducted in four phases:

Phase I - Review and select responsive, compliant responses

Phase II - Evaluate responses

Phase III - Select finalist **[(s)]**

Phase IV - Sign Contract **[(s)]**

Phase I - Review and Select Responsive, Compliant Responses. The purpose of this phase is to determine if each response complies with the mandatory terms, conditions, and specifications in the RFP. A pass/fail criteria will be used. A response must comply with all instructions listed in this RFP. The Lead State reserves the right to reject any and all responses, to modify these RFP specifications, or to waive any informalities in the RFP. Any response found to be non-responsive will be eliminated from further evaluation.

Phase II - Evaluate Responses. Only those responses found to be responsive under Phase I will be considered in Phase II. The Lead State may request clarification from one or more Responders. The responses must be made in writing as the Lead State will only use what is in writing for evaluation purposes. The response to the request for clarification may be considered along with the original response for the evaluation.

However, the Lead State reserves the right to make an award without further clarification of the responses received. Therefore, it is important that each response be submitted in the most complete manner possible.

Responses will be rated as follows:

Acceptance of Terms & Conditions	50	Points
Attachment D: Vendor submittals	375	Points
Attachment E: Price	575	Points
Attachment G: Specifications Ballistic Door Panels	<u>PASS/FAIL</u>	
TOTAL:	1000	Points

TG/ED/VO Preference Points (If applicable) 60 Points

As indicated above, points will be awarded based on acceptance of the terms and conditions as specified in this RFP. Acceptance of all terms and conditions will result in the award of the maximum points available. Responders should note that the Lead State reserves the right to pursue negotiations on any exception taken in Phase III. Responders should also note that the awarding of points does not automatically mean that the Lead State has accepted the Responder's proposed language.

Phase III - Select Finalist(s). Only those responses that are found to be responsive under Phases I and II will be considered in Phase III.

The Lead State reserves the right to request oral presentations, enter into negotiations, and/or request Best & Final offers by the Responders and the opportunity to interview key personnel during Phase II and/or III. The Lead State reserves the right to select the number of Responders for the Best & Final offer, oral presentations, and/or to enter into negotiations. The evaluation scores may be revised as a result of the responses to the oral presentations, Best & Final Offer, and/or negotiations.

The award of this Solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the Lead State believes it will receive the best value. The Lead State reserves the right to award this Solicitation to a single Responder, or to multiple Responders, whichever is in the best interest of the Lead State. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the Solicitation, or to re-issue the Solicitation, whichever is in the best interest of the Lead State.

The Sourcing Team will make a recommendation(s) on the award of this RFP and the number of vendors that should be awarded a contract. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and provided to the NASPO ValuePoint Management Board for approval.

Phase IV. Sign Contract with Awarded Vendor.

3.5 Notice of Intent to Award.

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

3.6 Protest.

A protest must be submitted in writing to the Single Point of Contact identified in Section 1.2 of this RFP and must be received within seven (7) calendar days after the date of the notice of intent to award. The Lead State may not consider any protests that are received after this deadline.

The Lead State will address all timely submitted protests and the Lead State will issue a written decision to the Offeror who submitted the protest. Protests that do not include the information required by the Lead State's statutes, regulations and rules may be rejected by Lead State. Lead State will receive protests in the following forms:

- Faxed protests submitted to the Single Point of Contact identified in Section 1.2 of this RFP.
- Emailed protests with attached letterhead submitted to the Single Point of Contact identified in Section 1.2 of this RFP.

- Letter submitted to the Single Point of Contact identified in Section 1.2 of this RFP.

3.7 Post Award Formalization of the Master Agreement

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

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

Section 4: Administrative and Technical Response Requirements

4.1 Mandatory Minimum Administrative Proposal Requirements

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

- 4.1.1 For all products sold, Supplier must be an original manufacturer or authorized distributor. If requested, Offeror must be able to identify an account number with manufacturers represented.
- 4.1.2 Each product sold shall honor a manufacturer's standard warranty for parts and labor at a minimum.
- 4.1.3 Prices must stay firm for the first two years (2) of the contract. Requests for additional increases in pricing for contract items will be limited to once a year, unless market situations arise. Any changes in pricing must be submitted in writing, to the Lead State, at a minimum of 30 days prior to a price increase. If accepted, a duly executed amendment to contract will be executed.

4.2 NASPO ValuePoint Master Agreement Statement of Compliance

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

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a master agreement, the scope of work

(Attachment B) and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offeror will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment A. Offeror must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment A).

4.2a Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 21.

4.2.b NASPO ValuePoint Administrative Fee and Reporting Requirements

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

Offeror shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the contract period. Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

4.2.c NASPO ValuePoint eMarket Center

To be eligible for award, the Offeror agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest, doing business as JAGGAER (and any authorized agent or successor entity to JAGGAER) to integrate its presence in the NASPO ValuePoint eMarket Center either through an electronic catalog (hosted or punchout site) or unique ordering instructions. Refer to Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

Those terms and conditions require as a minimum that the Offeror agrees to participate in development of ordering instructions. Proposer shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

4.2.d Promotion of the NASPO ValuePoint Master Agreement

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

- a. Briefly describe how you intend to promote the use of the Master Agreement.
- b. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
- c. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope the agreement with respect to any potential order?
- d. Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging contractors in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
- e. Does your company participate in any other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on your company for participating with NASPO ValuePoint.

4.2.e Usage Fee and Reporting Plan

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

The plan shall include but not be limited to the following components:

- a. Offerors shall identify the person responsible for providing the mandatory usage reports.
- b. Offerors shall identify the method and frequency in which usage data will be collected from authorized distributors.
- c. Offerors shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- d. Offerors shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

4.3 Lead State Terms and Conditions

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

4.4 Participating State Terms and Conditions

For informational purposes only, some Participating State specific Terms and Conditions are provided in Attachments to this solicitation and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendums. Offeror shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

4.5 Technical Requirements

This section contains technical requirements pertaining to the LED Emergency Light Bars, Siren Warning Accessories, and Other Related Accessories. Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. Offeror must identify in their Proposal how their company meets (or exceeds) all requirements listed in Section 4 of this RFP solicitation.

4.5.1 Offeror Profile

Provide the following information specific to your company:

- a. Your company's full legal name.
- b. Primary business address.
- c. Describe your company ownership structure.

- d. Employee size (number of employees).
- e. Website.
- f. Sales contact information.
- g. Your client retention rate during the past 3 years.
- h. A brief history of your company and the year it was founded.
- i. Describe your company's growth during the past three years.

4.5.2 Customer Service

- a. What are your hours of operation and when are key account people available to us?
- b. Describe how problem identification and resolution will be handled.
- c. How will you service our account? Describe the system you will use to manage our account.
- d. How do you respond to customer complaints and service issues?
- e. How do you assess customer satisfaction?
- f. What are your quality assurance measures and how are they handled in your organization?

4.5.3 Technology

- a. Describe your online system that Purchasing Entities would use to place orders and receive results. Include all methods of order submission.
- b. Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.

4.5.4 Data Security

- a. What measures do you take to protect sensitive customer information?

4.5.5 Scope of Work

- a. Offeror shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the Scope of Work in Attachment C. Offeror shall show each requirement and their response in their Proposal.

Section 5: Price and Cost Proposal

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

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

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

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

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

5.1 Price and Rate Guarantee Period

All prices and rates offered shall be guaranteed for the initial term of the Master Agreement. Any request for price or rate adjustment following the initial Master Agreement term is detailed in Section 11 of the NASPO ValuePoint Master Agreement Terms and Conditions.



Attachment A:

NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Specifications or Statement of Work;
- (5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

- a. The initial term of this Master Agreement is for 24 months or 2 years. This Master Agreement may be extended beyond the original contract period for 36 Months or 3 years additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

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

5. Participants and Scope

- a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

- c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspo.valuepoint.org to support documentation of participation and posting in appropriate data bases.
- d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.
- f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other

governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Administrative Fees

- a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.
- b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

- a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (5) Purchasing Entity and Contractor Purchase Order identifier/number(s); (6) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (7) Purchase Order date; (8) Ship Date; (9) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are

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

- c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.
- d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

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

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the

- agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
 - d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
 - e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
 - f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

9. NASPO ValuePoint eMarket Center

- a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.
- c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.
- d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

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

11. 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 thirty (30) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request.

Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. Individual Customers

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

Administration of Orders

13. Ordering

- a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - (1) The services or supplies being delivered;

- (2) The place and requested time of delivery;
 - (3) A billing address;
 - (4) The name, phone number, and address of the Purchasing Entity representative;
 - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
 - (6) A ceiling amount of the order for services being ordered; and
 - (7) The Master Agreement identifier.
- g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Shipping and Delivery

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

to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

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

15. Laws and Regulations

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

16. Inspection and Acceptance

- a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.
- d. The warranty period shall begin upon Acceptance.

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

No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

17. Payment

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

18. Warranty

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

19. License of Pre-Existing Intellectual Property

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

General Provisions

20. Insurance

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
 - (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 - (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

- e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

21. Records Administration and Audit

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

22. Confidentiality, Non-Disclosure, and Injunctive Relief

- a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

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

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

- c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

23. Public Information

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

24. Assignment/Subcontracts

- a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

25. Changes in Contractor Representation

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

26. Independent Contractor

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

27. Cancellation

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

28. Force Majeure

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

29. Defaults and Remedies

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
 - (1) Nonperformance of contractual requirements; or
 - (2) A material breach of any term or condition of this Master Agreement; or
 - (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
 - (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - (5) Any default specified in another section of this Master Agreement.

- b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
 - (1) Exercise any remedy provided by law; and
 - (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
 - (3) Impose liquidated damages as provided in this Master Agreement; and
 - (4) Suspend Contractor from being able to respond to future bid solicitations; and
 - (5) Suspend Contractor's performance; and
 - (6) Withhold payment until the default is remedied.
- d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

30. Waiver of Breach

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

a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

31. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement.

If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

32. Indemnification

- a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- c. The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
 - (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - (b) specified by the Contractor to work with the Product; or
 - (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - (d) It would be reasonably expected to use the Product in combination with such product, system or method.
- d. The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the

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

33. No Waiver of Sovereign Immunity

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

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

34. Governing Law and Venue

- a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the

Purchasing Entity's State.

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

35. Assignment of Antitrust Rights

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

36. Contract Provisions for Orders Utilizing Federal Funds

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

37. Leasing or Alternative Financing Methods

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

Attachment B:

STATE OF MINNESOTA GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** The contents of the RFP and the response of the successful responder will become Master Agreement contractual obligations, along with the final Master Agreement, if acquisition action ensues. A statement of acceptance of the proposed Contract Terms and Conditions, unless taken exception to, as specified in the RFP must be included in the response. Any suggestions for alternate language shall be presented. The Lead State is under no obligation to accept wording changes submitted by the responder. The Lead State is solely responsible for rendering decisions in matters of interpretation on all terms and conditions. Any response which fails to comply with this requirement may be disqualified as nonresponsive.

All general proposal terms, specifications and NASPO Terms & Conditions form a part of this RFP and will apply to any Master Agreements entered into as a result thereof.

2. **CONFLICT OF TERMS/ORDER OF PRECEDENCE:**
 - 2.1 A Participating Entity's Participating Addendum ("PA");
 - 2.2 Minnesota NASPO Master Agreement (includes negotiated Terms & Conditions)
 - 2.3 The Solicitation; and
 - 2.4 Accepted portions of Contract Vendor's response to the Solicitation, as modified in any proposal revisions (if permitted)

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. Contract Vendor 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 the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor.

3. **ADDENDA TO THE RFP.** Any addendum issued will become a part of the RFP. The Lead State may modify or clarify the RFP by issuing one or more addenda to all parties who have received the RFP. Each responder must follow the directions on the addendum. Addenda will be numbered consecutively in the order they are issued.
4. **AWARD.** The award of this solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the Lead State believes it will receive the best value. The Lead State reserves the right to award this solicitation to a single responder, or to multiple responders, whichever is in the best interest of the Lead

State. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the Lead State.

The Sourcing Team will make a recommendation on the award of this RFP. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and the NASPO Management Board.

5. **CLARIFICATION.** If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the responder shall immediately notify the Acquisition Management Specialist in writing, as specified in the introduction, of such error and request modification or clarification of the document.

Responders are cautioned that any activity or communication with a State employee or officer, or a member of the Evaluation Team, regarding this Solicitation's contents or process, is strictly prohibited and may, as a result, have its response rejected. Any communication regarding this Solicitation, its content or process, must be directed to the Acquisition Management Specialist listed in the Solicitation documents.

6. **COMPLETION OF RESPONSES.** A response may be rejected if it is conditional or incomplete. Responses that contain conflicting, false, or misleading statements or that provide references that contradict or do not support an attribute or condition stated by the responder, may be rejected.
7. **MASTER AGREEMENT ADMINISTRATOR.** The Master Agreement Administrator designated by NASPO and the State of Minnesota, Department of Administration is: Dustin Burns. Direct all correspondence and inquiries, legal questions, general issues, or technical issues regarding this RFP to:

Dustin Burns
Contract Administrator
Department of Administration
Office of State Procurement
50 Sherburne Avenue
112 Administration Building
St. Paul, MN 55155

Fax: 651.201.2441
E-mail: dustin.burns@state.mn.us

8. **DISPOSITION OF RESPONSES.** All materials submitted in response to this RFP will become property of the Lead State and will become public record after the evaluation process is completed. The evaluation process is complete when negotiations with the selected vendors are final. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:

- a. clearly mark all trade secret materials in its response at the time the response is submitted;
- b. include a statement with its response justifying the trade secret designation for each item; and,
- c. defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the Lead State, its agents and employees, from any judgments awarded against the Lead State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the Lead State's award of a Master Agreement. In submitting a response to the RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the Lead State. The Lead State is required to keep all the basic documents related to its Master Agreements, including responses to RFPs, for a minimum of seven years.

The Lead State will not consider the prices submitted by the responder to be trade secret materials.

9. **DISPUTE RESOLUTION PROCEDURES.** Any issue a responder has with the RFP document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to and received by the Master Agreement Administrator prior to the opening due date and time. Any issue a responder has with the Master Agreement award must be submitted in writing to the Master Agreement Administrator within five working days from the time the intent to award. This notice may be made by any of the following methods: notification by letter, fax or email, or posted on the Office of State Procurement website, www.mmd.admin.state.mn.us. The Lead State will respond to any protest received that follows the above procedure. For those protests that meet the above submission requirements, the appeal process is, in sequence: The responsible Master Agreement Administrator, the Office of State Procurement (OSP) Assistant Director, and the OSP Director.
10. **ELECTRONIC FILES TO DOWNLOAD, COMPLETE, AND RETURN.** See Section 3, Special Terms, Conditions, Scope of Work and Pricing.
11. **ENTIRE AGREEMENT.** A written Master Agreement (including the contents of this RFP and selected portions of Contract Vendor's response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.
12. **IRREVOCABLE OFFER.** In accordance with this Request for Proposal, and subject to all conditions thereof, the undersigned agrees that its response to this RFP, or any part thereof, is an irrevocable offer for 180 days following the submission deadline date unless stated otherwise in the RFP. It is understood and agreed that the response, or any part thereof, when accepted by the appropriate department and State officials in writing, may become part of a legal and binding Master Agreement between the undersigned vendor and the State of Minnesota.

- 13. MATERIAL DEVIATION.** A responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the terms and conditions.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE NASPO ValuePoint TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

A material deviation is an exception to the Request for Proposal general or NASPO ValuePoint terms and conditions and/or specifications that:

- a. gives the responder taking the exception a competitive advantage over other vendors; or,
- b. gives the Lead State something significantly different from that which the Lead State requested.

- 14. NONRESPONSIVE RESPONSES.** Responses that do not comply with the provisions in the RFP may be considered nonresponsive and may be rejected.

- 15. NOTICES.** If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

Dustin Burns
Contract Administrator
50 Sherburne Avenue
112 Administration Bldg.
St. Paul, MN 55155

dustin.burns@state.mn.us

- 16. PROPOSAL PREPARATION.** See Section 1, Introduction.
- 17. QUESTIONS.** See Section 1, Introduction.
- 18. SCHEDULE OF EVENTS.** See Section 1, Introduction.

- 19. TAXPAYER IDENTIFICATION:** The Contract Vendor shall be registered as a vendor to the Lead State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.
- 20. ACCEPTANCE OF PROPOSAL CONTENT.** The contents of this RFP and selected portions of response of the successful Proposer will become contractual obligations, along with the final Master Agreement, if acquisition action ensues. The Lead State is solely responsible for rendering the decision in matters of interpretation of all terms and conditions.
- 21. ADMINISTRATIVE PERSONNEL CHANGES.** The Contract Vendor must notify the AMS of changes in the Contract Vendor's key administrative personnel, in advance and in writing. Any employee of the Contract Vendor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contract Vendor. In the event that an employee is removed pursuant to a written request from the Acquisition Management Specialist, the Contract Vendor shall have 10 working days in which to fill the vacancy with an acceptable employee.
- 22. AMENDMENT(S).** Master Agreement amendments shall be negotiated by the Lead State with the Contract Vendor whenever necessary to address changes in the terms and conditions, costs, timetable, or other changes within the general scope of work. An approved Master Agreement amendment means one approved by the authorized signatories of the Contract Vendor and the Lead State as required by law.
- 23. AMERICANS WITH DISABILITIES ACT (ADA).** Products provided under the Master Agreement must comply with the requirements of the Americans With Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Master Agreement must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.
- 24. AWARD OF RELATED CONTRACTS.** Not applicable.
- 25. AWARD OF SUCCESSOR CONTRACTS.** Not applicable.
- 26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**
Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.
- a. Instructions for certification:**
1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and non-procurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a

prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

27. CHANGE REQUESTS. Not applicable.

28. CONFLICT MINERALS. Contract Vendor agrees to provide information upon request regarding adherence to the Federal Conflict Minerals Trade Act. See: <http://beta.congress.gov/111/bills/hr4173/111hr4173enr.pdf#page=838>
<http://www.sec.gov/news/press/2012/2012-163.htm>

29. COPYRIGHTED MATERIAL WAIVER. The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.

30. EFFECTIVE DATE. Pursuant to Minnesota law, the Master Agreement arising from this RFP shall be effective upon the date of final execution by the Lead State, unless a later date is specified in the Master Agreement.

31. FOREIGN OUTSOURCING OF WORK. Not applicable.

32. GOVERNMENT DATA PRACTICES. The Contract Vendor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contract Vendor and all data provided to the Lead State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the Lead State. The Lead State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the Lead State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Master Agreement, the Contract Vendor shall retain responsibility under the terms of this article for such work.

33. HAZARDOUS SUBSTANCES. To the extent that the goods to be supplied by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

34. INDEMNIFICATION, HOLD HARMLESS, AND LIMITATION OF LIABILITY. The Contract Vendor shall indemnify, protect, save and hold harmless the Lead State and the Participating Entity, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Master Agreement by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the Lead State's and Participating Entity's failure to fulfill its obligations pursuant to the Master Agreement.

- 35. JURISDICTION AND VENUE.** This RFP and any ensuing Master Agreement, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota, USA. Venue for all legal proceedings arising out of the Master Agreement, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. By submitting a response to this Request for Proposal, a Responder voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of this RFP, any ensuing Master Agreement, or any breach thereof.
- 36. LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.
- 37. NONVISUAL ACCESS STANDARDS.** Not applicable.
- 38. NOTICE TO RESPONDERS.** Pursuant to Minn. Stat. § 270C.65, subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.
- 39. ORGANIZATIONAL CONFLICTS OF INTEREST.** The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
 - the Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or
 - the Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Office of State Procurement that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Master Agreement. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the State may terminate the Master Agreement for default.

The provisions of this clause shall be included in all subcontracts for work to be

performed, and the terms “Contract,” “Contract Vendor,” “Master Agreement”, “Master Agreement Administrator” and “Contract Administrator” modified appropriately to preserve the State’s rights.

- 40. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD AND CARDHOLDER INFORMATION SECURITY.** Not applicable.
- 41. PERFORMANCE WHILE DISPUTE IS PENDING.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
- 42. PREFERENCE. Targetted/Economically Disadvantaged.** In accordance with Minn. Stat. § 16C.16, subds. 6 and 7, eligible certified targeted group (TG) businesses and certified economically disadvantaged (ED) businesses will receive a 6 percent preference on the basis of award for this RFP. The preference is applied only to the first \$500,000 of the response to the RFP. Eligible TG businesses must be currently certified by the Office of State Procurement prior to the bid opening date and time.

To verify TG/ED certification, refer to the Office of State Procurement’s web site at www.mmd.admin.state.mn.us under “Vendor Information, Directory of Certified TG/ED Vendors.”

To verify TG eligibility for preference, refer to the Office of State Procurement’s web site under “Vendor Information, Targeted Groups Eligible for Preference in State Purchasing” or call the Division’s HelpLine at 651.296.2600.

Reciprocal Preference. In accordance with Minn. Stat. §16C.06, subd 7, the acquisition of goods or services shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state, the preference shall be equal to the preference given or required by the state of the non-resident vendor. If you wish to be considered a Minnesota Resident vendor you must claim that by filling out the Resident Vendor Form included in this solicitation and include it in your response.

Veteran. In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by:**

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United

- States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
 - (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first \$500,000 of the response.

If responder is claiming the veteran-owned preference, attach documentation, sign and return form with response to the solicitation. Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

- 43. PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. You may call 651.201.2413 between the hours of 8:00 a.m. to 4:30 p.m. to make the request.
- 44. PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Master Agreement prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Office of State Procurement.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

- 45. PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Master Agreement number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a

binding contract

- 46. RIGHTS RESERVED.** Notwithstanding anything to the contrary, the State reserves the right to:
- a. reject any and all responses received;
 - b. select, for Master Agreements or for negotiations, a response other than that with the lowest cost;
 - c. waive or modify any informalities, irregularities, or inconsistencies in the responses received;
 - d. negotiate any aspect of the proposal with any responder and negotiate with more than one responder;
 - e. request a BEST and FINAL OFFER, if the State deems it necessary and desirable; and
 - f. terminate negotiations and select the next response providing the best value for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Master Agreement.
- 47. RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.
- 48. SEVERABILITY.** If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.
- 49. STATE AUDITS** (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.
- 50. SURVIVABILITY.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Master Agreements. These rights and duties include, but are not limited to paragraphs: Indemnification, Hold Harmless and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Publicity, Intellectual Property Indemnification, and Admin Fees.
- 53. TRADE SECRET/CONFIDENTIAL INFORMATION.** Any information submitted as Trade Secret must be identified and submitted per the Trade Secret Form and must meet Minnesota Trade Secret as defined in Minn. Stat. § 13.37.

eMarket Center Appendix

- a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.
- b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.
- c. At a minimum, the Contractor agrees to the following:
 - (1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.
 - (2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).
 - (a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data [Insert Time Frame Here] to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.
 - (b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update [every Insert Time Frame Here] to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:

- (1) Updated pricing files are required by the 1st of the month and shall go into effect in the eMarket Center on the 1st day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 2/01/13). Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 1/01/10).
 - (2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.
- e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: www.sciquest.com or call the JAGGAER Supplier Network Services team at 800-233-1121.
- f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:
- a. Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and
 - b. The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and
 - c. The Catalog must include a Lead State contract identification number; and
 - d. The Catalog must include detailed product line item descriptions; and
 - e. The Catalog must include pictures when possible; and
 - f. The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint.

- g. Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.
- g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.
- h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.
- i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.
- j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.
- k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

Attachment C:

SPECIAL TERMS, CONDITIONS, SCOPE OF WORK AND PRICING

PREFACE STATEMENT. THE INFORMATION CONTAINED BELOW DESCRIBES THE SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS APPLICABLE TO THE RFP (RFP/SOLICITATION) AND SUBSEQUENT CONTRACT, AND IS IN ADDITION TO THE GENERAL TERMS AND CONDITIONS.

1. **ESTIMATED AMOUNT.** The estimated total dollar value of the Contract for one year is \$1,800,000.00. However, this shall not be construed as either the minimum or maximum amount. It shall also be understood and accepted by the Responder that any quantities shown in this RFP are estimated quantities only and impose no obligation upon the Lead State, NASPO ValuePoint or Participants either minimum or maximum.
2. **PURPOSE.** The purpose of this Solicitation is to receive responses and award contract(s) with qualified manufacturers to provide Public Safety Vehicle Accessories And LED Emergency Light Bars, Siren Warning Accessories for safety vehicles to the Minnesota Department of Public Safety's Lead State Highway Patrol Division (DPS), other State Agencies, NASPO ValuePoint Participants, and Minnesota CPV Members (collectively referred to as Customers hereafter), on an as needed basis. The Contracts will be set up as a percent (%) discount from the Manufacturer's Suggested Retail Price (MSRP) for the products offered (see Item No. 7 below).
3. **MINNESOTA COOPERATIVE PURCHASING VENTURE (CPV) MEMBERS.** The Contract will also be available to all CPV members within the State of Minnesota only. Minn. Stat. § 16C.03, subd. 10 authorizes the Lead State, acting through its Office of State Procurement, to enter into purchasing agreements with one or more governmental units and other entities allowable by law, as described in Minn. Stat. § 471.59, subd. 1, to exercise jointly the purchasing powers and functions each has individually. This authority is referred to as the Cooperative Purchasing Venture program. For more information, see Lead State web site www.mmd.admin.state.mn.us.

The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications.

4. **REQUIRED CAPABILITIES.** The Contract Vendor must be a qualified manufacturer of LED emergency light bars, siren warning accessories, and other related accessories. Qualified manufacturers must have been in business providing these items for a minimum of two (2) years. The Contract Vendor must maintain an internet website for Customers to view products and product configurations, warranties, and place orders. See Number 18 below.

5. **DELIVERY REQUIREMENTS.** Unless otherwise mutually agreed to, in-stock items must be delivered within five (5) business days after receipt of order and non-stock items must be delivered within fifteen (15) business days after receipt of order. A business day is defined as Monday through Friday from 8:00 AM - 5:00 PM CT. Delivery requirements for custom made items will be negotiated at time of order placement. Orders must be shipped according to the directions of the Customer.

No delivery can be made on State holidays, Saturday or Sunday or after 4:00 p.m. on weekdays without prior approval by the Customer to which the equipment is being delivered. The Contract Vendor must confirm delivery locations and requirements with the Customer. Prior to delivery, the Contract Vendor is responsible for confirming with the Customer that the delivery location will accommodate unloading the equipment.

6. **BUYING "OFF" CONTRACT.** This Contract does not prohibit Lead State agencies from using their delegated local purchasing authority to procure similar goods and services from other vendors.
7. **SCOPE OF WORK.** The Customers intend to purchase provide Public Safety Vehicle Accessories and LED Emergency Light Bars, Siren Warning Accessories for vehicles. Related accessories may include, but not limited to, items which are part of a "Traffic Awareness Package" or "Vehicular Emergency Warning Products" which includes all warning lights such as; roof-mounted light bars, interior lighting packages, and other miscellaneous warning lights like scene lights, spot lights, as well as siren amplifiers, switches, speakers, mounting brackets, etc. Vehicle Mounted Equipment Items such as cages, push grilles, shotgun holders, etc., are also being considered. Items not affixed to the vehicle and data collecting devices are excluded. The State reserves the right to determine what products will be allowed in the Contract.

The specific manufacturers desired are: Federal Signal, Whelen, Code 3, SpeedTech Lights, Extreme Tactical Dynamics, Feniex Ind., Able 2, Star Warning Systems, Signal Vehicle Products, Soundoff Signal, and Carson Mfg. These manufacturers are intended to establish a standard only and **are not restrictive**. Other manufacturers with products having comparable quality, style, and performance characteristics will be considered. The State reserves the right to reject any alternate manufacturer that it believes is not offering products with comparable quality, style, and performance characteristics.

Vehicle Mounted Equipment will include items such as, but not limited to: Consoles, Partitions, Window Armor, Vehicle Armor, Push bumpers, Prisoner Seats, K9 Enclosures and Accessories, Gun Locks, Trunk Trays, Cargo Slides, Printer Mounts, Computer Mounts, Docking Stations, Anti-Theft Devices, Spotlights, Idle Systems, Air Bag Cutouts, Skid Plates, ASTM E3113 Ballistic-resistant Vehicle Door Panels, Trunk Organizers, Cargo Barriers, Wiring Harness, Gun Racks, Siren Speakers, etc. Items not affixed to the vehicle and data collecting devices are excluded.

8. **SPECIFICATIONS.** All emergency light bars must meet applicable national and international standards for emergency lights which include, but are not limited to, SAE J1113-21 and -41, J575, J578, J595, J845, and subsequent revisions, or appropriate national or international standards (such as CISPR 12 and 25) if SAE standard has been superseded. Standard specifications for ballistic-resistant vehicle door panels can be found in Attachment G.
9. **THIRD-PARTY DOCUMENTATION.** If requested by the Customer, documentation of independent third-party laboratory certification of light bar modules meeting applicable national and international standards must be provided by the Contract Vendor at no additional cost.

If the Contract Vendor has an AMECA accredited testing facility that may suffice for third party documentation for the products for which the accreditation has been obtained.

10. **PRODUCT DEMONSTRATIONS.** If requested, the Contract Vendor must provide product demonstrations at no cost to the Customer. The Contract Vendor will only be required to provide demonstrations to Customers in the states for which they were awarded.
11. **RIGHT TO ADD.** During the term of the contract, the State reserves the right to add additional location(s), services, and products upon mutual agreement between the State and the Contract Vendor(s) through a duly executed amendment to the contract.
12. **ITEMS OFFERED AS NEW.** All products, material, supplies and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the Solicitation opening, unless otherwise stated in this Solicitation.
13. **PRICING OFFERED IN RESPONSE.** Prices listed in your response to this Solicitation must take into consideration all inherent costs of providing the requested goods and/or services. The Responder agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations. The Lead State, NASPO ValuePoint and Participants will not pay any additional charges beyond the price(s) listed in the response, unless otherwise provided for by law or expressly allowed by the terms of the Solicitation or in Participants Participating Addendum.
14. **HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide Material Safety Data Sheets regarding those substances. Should a customer request an MSDS, the Contract Vendor will provide one if one is available for the product sold, at no cost.

15. **ADMINISTRATIVE PERSONNEL CHANGES.** The Contract Vendor must notify the AMS of changes in the Contract Vendor's key administrative personnel, in advance and in writing. Any employee of the Contract Vendor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contract Vendor. In the event that an employee is removed pursuant to a written request from the Acquisition Management Specialist, the Contract Vendor shall have 10 working days in which to fill the vacancy with an acceptable employee.
16. **CONTRACT VENDOR PERSONNEL AND PROJECT MANAGEMENT.** If the need arises to add to or remove any of the Contract Vendor's key personnel named in the transmittal letter, whether permanently or temporarily, the Contract Vendor must provide written notification two weeks in advance to the Acquisition Management Specialist. This notice is only required if the change is for more than 10 consecutive workdays excluding normal vacation leave. If the Contract Vendor is adding personnel, the written notification should include the proposed individual's name and his or her resume. If the AMS does not approve the proposed change(s), the AMS will respond in writing within two weeks.
17. **AUTHORIZED DISTRIBUTOR LIST.** The Contract Vendor may submit a list of authorized distributors specific to each state.

The Contract Vendor may choose to provide all quotes, accept all purchase orders, accept all payments, perform all deliveries, and provide all invoices, or the Contract Vendor may delegate these duties to its authorized distributors. The Contract Vendor is responsible for its authorized distributor's performance. No authorized distributor shall serve to terminate or in any way affect the primary legal responsibility of the Contract Vendor for timely and satisfactory performance of the obligations of the Master Agreement.

The Participating Entity reserves the right to remove any authorized distributor only from their Participating Addendum at any time due to poor performance upon written notice to the Contract Vendor. For Participating Entities in states without authorized distributors, the Contract Vendor must take all orders direct until an authorized distributor is assigned.

The Contract Vendor is responsible for collecting, and submitting, all sales reports from their sales and the authorized distributors, and submitting all Administration Fees on invoiced sales whether they have been paid or not.

The Contract Vendor may add and/or delete Authorized Distributors at any time during the Master Agreement term upon request and mutual agreement of the Participating Entity.

18. **CONTRACT PRICES.** Prices offered will be a percent (%) discount from the Manufacturer's Suggested Retail Price (MSRP) for the products offered. The Responder shall provide a Manufacturer's MSRP Price List with a date and catalog number and a percentage (%) discount to be applied to the price list. This Price List is a max price for which the discount will be applied.

Responders will enter their price offer on the attachment E Price Schedule. Responders may choose to either enter their response for LED light Bars, Siren warning accessories in the **(Red Tabs)** in price schedule or Public Safety Vehicle Equipment Accessories **(Yellow Tabs)** or both if applicable. Responders may choose to offer their products to all states, or limit their offer to just one or more states. The Contract Vendor must provide products to all Customers within each state they are awarded. **Responders must identify which states are eligible for their offer on the Price Schedule.**

The percent (%) discount offered from the Manufacturer's Price List must remain firm or increase, as stated below, and cannot decrease during the entire Contract term. The percent (%) discount must be the same for all Customers. Responders may submit multiple percent discounts based on item categories, but may not submit multiple percent discounts per single items.

Any increase in the percent (%) discount will be allowed during the term of the Contract providing it is available to all Customers and it is approved by the Contract Administrator and is confirmed in a fully executed Contract amendment.

The Manufacturer's Price List may only be changed up to two (2) times within any twelve (12) month period to adjust prices, when mutually agreed to through a fully executed amendment. New items may be added at any time upon written notice to, and agreement of, the Contract Administrator.

Market Basket. The Price Schedule includes a Market Basket which provides a list of generic light bars. Responders are to enter product information for comparable items from their catalog.

19. **HIGHER DISCOUNT FOR QUANTITY BREAKS.** Responders may also offer quantity price breaks. The price breaks will be in the form of a higher percentage discount, off of the Manufacturer Price List, for the order. Use the Price Schedule's third tab at the bottom of the Worksheet to submit the higher discounts offered and the quantity break lines (e.g., 5% higher discount for 20-29 units ordered, 10% higher discount for 30-39 units ordered, etc.).
20. **MANUFACTURER CATALOGS AND PRICES LISTS.** The Contract Vendor will provide copies of the manufacturer's catalogs and price lists if so requested by any Customer at no cost to the requestor.

21. **CONTRACT VENDOR WEBSITE.** The Contract Vendor must maintain an internet website for Customers to view products, product configurations, and warranties. Responders must include with their response an explanation of their website capabilities and are strongly encouraged to complete VPAT form included in Section 2.
22. **WARRANTY.** See Attachment A, Section 18 of NASPO ValuePoint Master Agreement Terms and Conditions
23. **SHIPPING REQUIREMENTS.** See Attachment A, Section 14 of NASPO ValuePoint Master Agreement Terms and Conditions
24. **FREIGHT COSTS.** The Responder shall offer a percent discount with Freight costs prepaid by the Contract Vendor and allowed to the Customer (the Contract Vendor is NOT allowed to invoice for freight).

Attachments H-Y: Lead State and Additional Participating States' Terms and Conditions

Some States listed in Section 1.6 may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. State-specific terms and conditions are included in Attachments E-Y.

A. PARTICIPATING STATES TERMS & CONDITIONS – FOR INFORMATIONAL PURPOSES ONLY

A1. STATE OF MINNESOTA UNIQUE TERMS AND CONDITIONS.

1. **ADMINISTRATIVE FEE.** Not applicable.
2. **DATA SECURITY.** The Contract Vendor is required to recognize that on the performance of the Participating Addendum the Contract Vendor will become a holder of and have access to private data on individuals and nonpublic data as defined in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 and Minnesota Statutes Section 270B.02.

In performance of the contract, the Successful Vendor agrees that it will comply with the laws under Minnesota Statute Chapters 325E.64, 270B and 13, relating to confidentiality of information received as a result of the contract. The Contract Vendor agrees that it, its officers, employees and agents will be bound by the above confidentiality laws and that it will establish procedures for safeguarding the information.

The Contract Vendor agrees to notify its officers, employees and agents of the requirements of confidentiality and of the possible penalties imposed by violation of these laws. The Contract Vendor agrees that neither it, nor its officers, employees or agents will disclose or make public any information received by the Contract Vendor on behalf of the State of Minnesota.

The Contract Vendor shall recognize the State of Minnesota's sole and exclusive right to control the use of this information. The Contract Vendor further agrees that it shall make no use of any of the described information, for either internal or external purposes, other than that which is directly related to the performance of the Participating Addendum.

The Contract Vendor shall recognize that if it becomes aware of a privacy or security incident regarding the content of any State of Minnesota information, the Contract Vendor agrees to immediately report the event to the Minnesota Office of Enterprise Technology (MN.IT) (d/b/a MN.IT).

The Contract Vendor agrees to indemnify and hold harmless the State of Minnesota from any and all liabilities and claims resulting from the unauthorized disclosure by the Contract Vendor, its officers, employees or agents of any information required to be held

confidential under the provisions of the Participating Addendum. The Contract Vendor must return all source data to the State's project manager.

3. **BUYING "OFF" CONTRACT.** This Participating Addendum does not prohibit State agencies from using their delegated local purchasing authority to procure similar goods and services from other vendors.
4. **DEFAULT.** All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. No substitutions or cancellations are permitted without written approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be including but not limited to; removed from the vendor's list, suspended or debarred from receiving a Master Agreement for failure to comply with the terms and conditions of the Master Agreement, or for failure to pay the State for the cost incurred on the defaulted Master Agreement.
5. **DEFINITIONS. CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications. For additional information, visit the OSP website at www.mmd.admin.state.mn.us.
 - a. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.
 - b. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.
 - c. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Participating Addendum.
 - d. **Contract Vendor and Contractor.** These two terms apply to the awarded vendor from the NASPO Master Price Agreement that OSP selects to receive a Participating Addendum.

- e. **Contract.** Contract is defined as the NASPO ValuePoint Master Price Agreement and the Minnesota Participating Addendum.
6. **EFFECTIVE DATE and CONTRACT PERIOD.** The Contract shall be effective upon the date of final execution by the State of Minnesota. The Contract term will begin on the date of Participating Addendum execution, to [Enter Specific Date], with the option to extend up to [Enter Numeric #] months, upon agreement by all parties.
7. **ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.
8. **E-VERIFY CERTIFICATION.** By submission of a response for services in excess of \$50,000, the responder certifies that as of the date of services performed on behalf of the State, the responder and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. In the event of contract award, the contract vendor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on our OSP website. All subcontractor certifications must be kept on file with the contract vendor and made available to the State upon request.
9. **FUNDING OUT CLAUSE.** Not applicable.
10. **GENERAL INSURANCE REQUIREMENTS.** Not applicable.
11. **INDEMNIFICATION.** For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations to Cooperative Purchasing Venture (CPV) Members, including Board of Trustees of the Minnesota State Colleges and Universities, in addition to Agency as defined in Minn. Stat. § 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.
12. **PAYMENT.** Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.

Conditions of Payment. The Contract Vendor under the Contract must be in accordance with the Contract as determined by the sole discretion of the State's Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration

requirements of the Office of the Minnesota Secretary of State.

13. **PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.** By signing the Contract, Contract Vendor certifies that they have read and will comply with Minn. Stat. §§ 325E.385-325E.388.
14. **PURCHASING CARDS.** Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without adding a surcharge or passing the processing fees or for the purchasing card back to the State. The State's single purchase limit is \$5,000 on the purchasing card.
15. **PROFESSIONAL/TECHNICAL (P/T) SERVICES.** Not applicable.
16. **PRINTERS AND MULTI-FUNCTIONAL DEVICES.** Not applicable.
17. **RETAINAGE.** Not applicable.
18. **SUBCONTRACTOR PAYMENT.** Not applicable.
19. **SUPPLY CHAIN SECURITY.** The Contract Vendor must ensure that the Contract Vendor and any subcontractors or third parties involved in assembling, manufacturing, packaging, distributing, handling, warehousing, transporting or shipping State of Minnesota goods, including goods intended to be but not yet delivered to the State of Minnesota, meet all applicable security standards and all applicable local, state, federal, and international laws, rules and regulations (hereinafter "supply chain security").

Contract Vendor must maintain certification in an official supply chain security program (ISO 28000, Customs-Trade Partnership Against Terrorism (C-TPAT), Authorized Economic Operator (AEO), or other program accepted in writing by the State of Minnesota, Office of Information Technology (MN.IT) Services and the State of Minnesota, Department of Administration's Office of State Procurement (OSP)) and comply with the program's security standards for all orders sourced from the Contract/Agreement. To demonstrate certification, Contract Vendor must provide to OSP and MN.IT within one month following the effective date of this Contract/Agreement or amendment adding this Section, whichever is later, a letter verifying its certification status in an official supply chain security program and, if available, supporting documentation of its certification. Contract Vendor must immediately notify OSP and MN.IT of any change to its certification status.

Alternatively, if Contract Vendor is not certified or loses certification, Contract Vendor must complete an MN.IT security form to confirm that it complies with supply chain security. The form will require supporting documentation of any responses and must be completed to MN.IT's satisfaction.

Notification of Supply Chain Security Breach. Contract Vendor and its subcontractors must immediately notify OSP, MN.IT, and the purchasing entity, if different from MN.IT, of any breach of supply chain security involving State of Minnesota goods, including goods intended to be but not yet delivered to the State of Minnesota. Breach of supply chain security includes, but is not limited to, cargo theft, tampering, unauthorized access, or other activities that involve suspicious actions or circumstances. Goods

received with viruses, malware or similar security deficiencies constitute breach of supply chain security.

Return/Rejection of Goods. If a breach of supply chain security has occurred or the State of Minnesota in good faith suspects a breach may have occurred, including evidence that packaging or goods were tampered with or damaged, the State may reject delivery of those goods and/or return any goods already delivered. Breach of supply chain security has the meaning described in the preceding Subsection “Notification of Supply Chain Security Breach.” Rejection of delivery or return of goods shall be solely at the expense and responsibility of the Contract Vendor.

The State of Minnesota may instruct Contract Vendor, at Contract Vendor’s expense, to sanitize or destroy returned goods and, upon completing sanitization or destruction, Contract Vendor must provide a Certificate of Data Destruction that meets the requirements of the then current version of NIST Special Publication 800-88. The Certificate of Data Destruction must be provided to MN.IT within one month following the completion of sanitization or destruction.

At no additional expense to the State of Minnesota, Contract Vendor must provide within a reasonable time frame replacement goods for any goods that were rejected at delivery or returned due to a supply chain security breach.

20. **TAXES.** Not applicable.

21. **TERMINATION OF THE PARTICIPATING ADDENDUM.** The Participating Addendum may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted. The Contract Vendor may request to cancel the Participating Addendum but must receive written approval from the State.

B1. STATE OF MONTANA UNIQUE TERMS AND CONDITIONS.

State Terms and Conditions

- 1. ACCESS AND RETENTION OF RECORDS:** Contractor agrees to provide the department, 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 State of Montana or third party.
- 2. ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

3. **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.
4. **HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.
5. **REDUCTION OF FUNDING:** State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through 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, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.
6. **VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent 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. (Section 18-1-401, MCA.)

7. **TAX EXEMPTION:** State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].
8. **STATE OF MONTANA ADMINISTRATIVE FEE:** The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this 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.
9. **REQUIRED REPORTING:** Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

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

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. 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.

a. 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. 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. 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:
- (9) 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.

- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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).
- (14) 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. 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.

A. 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. 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.

C1. STATE OF UTAH UNIQUE TERMS AND CONDITIONS.

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

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

- a) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.
- b) "Contract" means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.

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

made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This "Status Verification System" requirement, also referred to as "E-Verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the State

Entity or the State of Utah.

8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional 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 sole 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, dated December 13, 2006, 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 Division and Contractor, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if identified elsewhere in this Contract.

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

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

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Goods ordered prior to date of termination. In no event shall the Division or Eligible Users be liable to the Contractor for

compensation for any Good neither requested nor accepted by the Eligible Users. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Division or the Eligible Users for any damages or claims arising under this Contract.

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

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

14. **SALES TAX EXEMPTION:** The Goods under this Contract will be paid for from the Eligible User's funds and may be used in the exercise of the Eligible User's essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

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

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

16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

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

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

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

17. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
18. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions, and prices of this Contract.
19. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
20. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
21. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and

Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

22. DELIVERY: Time is of the essence for all deliveries made under this Contract. All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Eligible User, except as to latent defects, fraud, or Contractor's warranty obligations. Contractor's failure to provide the Goods by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping the Goods.

23. REPORTS AND FEES:

1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. 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:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
4. **Fee Payment:** After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

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

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

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

26. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Goods to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

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

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

29. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Goods, documents, records, programs, data, articles, memoranda, and other materials not developed or

licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract, shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.

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

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

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

31. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
32. **REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The Division may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division or the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Goods that do not conform to this Contract.
33. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.
34. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the Division and the relevant Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
35. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be done in writing.
36. **CONTRACT INFORMATION:** During the duration of this Contract, the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.

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

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

C1. STATE OF HAWAII UNIQUE TERMS AND CONDITIONS.

1. Participation: All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a “Participating Entity”). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.
2. Changes: Usage Reports. Contractor shall submit a quarterly gross sales report (including zero dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The report shall identify each transaction and include the following information:

- Department/Agency Name
- Date of Purchase
- Product/Service Description
- Quantity
- Unit of Measure
- Item No. Part Number (if applicable) MSRP List Price
- NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- A. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- B. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- C. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11- 355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- D. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- E. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

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

- F. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
 - 1. Chapter 237, General Excise Tax Law;
 - 2. Chapter 383, Hawaii Employment Security Law;
 - 3. Chapter 386, Workers' Compensation;
 - 4. Chapter 392, Temporary Disability Insurance;
 - 5. Chapter 393, Prepaid Health Care Act; and

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

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

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

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6)

months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3- 122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Offeror must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

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

3. **Licensing.** Offerors(Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal(Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.
4. **Lease Agreements:** Leasing is not authorized by this Addendum
5. **Subcontractors:** Subcontractors are (or are not) allowed under this Addendum.
6. **Freight Charges (unless otherwise stated in the master contract):** Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

7. **Purchase Order and Payment Instructions:** All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. add # and the NASPO ValuePoint Master Agreement Number add #.
 - Purchase Orders and Payments shall be made to **add contractor name** or authorized subcontractors, if any.
8. **Participating Entity as Individual Customer:** Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.
9. **Entire Contract:** This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

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

D1. STATE OF VERMONT UNIQUE TERMS AND CONDITIONS.

1. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Sub recipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.
2. **Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or federally- funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. The Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

- 3. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- 4. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 5. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 6. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

- 7. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed
- Operations Personal
- Injury Liability Contractual
- Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence.
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.
- 10. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.
- 11. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

- 12. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claim or audit findings involving the records have been resolved.
- 13. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.
- 14. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 15. Taxes Due to the State:**
- A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - B.** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 16. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

- 17. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:
- A.** is not under any obligation to pay child support; or
 - B.** is under such an obligation and is in good standing with respect to that obligation; or
 - C.** has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

- 18. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

- 19. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 20. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.
- 21. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from

participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

- 22. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
- 23. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- 24. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
- 25. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- 26. Termination:**
 - A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Sub recipient from State revenues.
 - B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. **Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

27. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

28. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

29. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

30. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal

Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- C. **Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

- 31. Requirements Pertaining Only to State-Funded Grants:** Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein

