



OFFICE OF PROCUREMENT AND CONTRACT COMPLIANCE

DATE: November 19, 2025

FILE: PR-26-049

* Assigned by procurement

TO: George R. Keller, Jr. CPPT
City Manager

DocuSigned by:

Adam Reichbach

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VIA: Adam Reichbach
Assistant City Manager

Message:

Adam Reichbach

VIA: Chris O'Brien
Director of Public Safety

DocuSigned by:

Chris O'Brien

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THRU: Otis Thomas
Director, Procurement and Contract Compliance

DocuSigned by:

Otis Thomas

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FROM: Jeff Devlin
Chief of Police

DocuSigned by:

Jeffrey Devlin

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Initial
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SUBJECT: Recommendation to Approve the Issuance of Blanket Purchase Agreements to GL Distributors, Inc. and Federal Eastern International, LLC for Body Armor and Ballistic Resistant Products in an amount of \$35,000.00 per vendor from November 8, 2025, through April 30, 2027 with the option to renew for three additional one-year periods. The Procurement Method used is Piggyback.

ISSUE:

The Police Department needs Body Armor and Ballistic Resistant Products. The supplies are required to outfit all sworn officers with essential safety equipment, including ballistic vests. A competitive process was done through The National Association of State Procurement Officials ("NASPO") via the State of Colorado Solicitation # RFP-SPCO-AR-25-03 for Body Armor and Ballistic Resistant Products.

The contract was awarded to Point Blank Enterprises, Inc. (authorized reseller/vendor: Federal Eastern International, LLC) and GH Armor Systems, Inc. (authorized reseller/vendor: GL Distributors, Inc.). The current term of the agreements is from May 1, 2025, through April 30, 2027, with an option to renew the contract for three additional one-year periods. Federal Eastern and GL Distributors agreed to allow the City of Hollywood to piggyback # Master Agreements #198468 and #198466 under the same terms, conditions, and pricing.

Blanket Purchase Agreements will be issued to each vendor as follows:

- Federal Eastern - \$35,000.00
- GL Distributors, Inc. - \$35,000.00

The Police Department plans to present a joint resolution to the Commission for body armor and ballistic-resistant products to address Public Safety's operational needs for the remainder of the fiscal year. City Commission approval will be required as the combined purchases will exceed the purchasing threshold of \$100,000.00.

AUTHORITY:

§ 38.41 COMPETITIVE SOLICITATIONS REQUIRED; EXCEPTIONS

(C)(5) Piggyback purchases:

The CPO may procure, without following formal solicitation procedures, all goods, supplies, materials, equipment, and services that are the subject of contracts with the state, its political subdivisions, the United States government, other governmental entities, or a corporation not for profit whose members are governmental entities, public officers, or any combination thereof ("piggyback"), provided that the goods, supplies, materials, equipment, or services are the subject of a price schedule negotiated by the entities and is based strictly on competitive bids, quotations, or competitive proposals and not on any preference. Utilization of other governmental entities' contracts shall be permitted only during the term of the other governmental entity's contract.

Pursuant to Section 38.38 of the [Procurement Code](#), the City Manager or designee will have authority to approve and execute contracts up to \$100,000.

Funding has been provided in the fiscal year 2026 budget for the Police Department in Account Number 001.204105.52100.552421.000000.000.000.

RECOMMENDATION:

Authorize the issuance of Blanket Purchase Agreements to GL Distributors, Inc., and Federal Eastern International for Body Armor and Ballistic Resistant Products in an amount not to exceed \$35,000.00 per vendor, with the option to renew for three additional one-year periods.

Signed by:

George R. Keller, Jr. CPPT

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12/4/2025

APPROVED BY: George R. Keller, Jr. CPPT
City Manager

Date:

Attachments: Executed Piggyback Agreements/Pricelists

Piggyback Request Form and Checklist

Solicitation



Piggyback/Cooperative Contract Request Form and Checklist

(Use for purchase(s) over \$5,000, when piggybacking off other contracts)

| | |
|------------------------|---------------------------------------|
| Department(s): Police | Division/Area: Professional Standards |
| Requestor: Cherie Cohn | Title: Lieutenant |
| Phone: 954-967-6051 | Email: ccherie@hollywoodfl.org |
| | |

| | |
|---|--|
| Requested Vendor: GL Distributors, Inc. and Federal Eastern, LLC | Vendor Number: 15734 and 34239 |
| Address: 18459 Pines Blvd Suite 340 Pembroke Pines, FL 33029 and 751 Pinella Bayway Saint Petersburg, FL 33715 | |
| Contact Person: Mark Altman and Austin Downing | Title: Sales Representative |
| Phone: 954-441-1473 and 954-459-5534 | Email: mark@gldistributors.com and adowning@fedeastintl.com |

| | |
|--|--|
| Total cost of the requested product/service: \$35,000.00 | Total estimated annual (fiscal year) cost of requested product/service: \$35,000.00 |
| Account Number(s): 001.204105.52100.552421.000000.000.000 | |

Piggyback/Cooperative Contract Summary

| | |
|--|---|
| Piggyback/Cooperative Contract Number and Title: | Master Agreement Number: 198466 and 198468 For Body Armor and Ballistic Resistant Products |
| Awarding Agency: | National Association of State Procurement Officials ("NASPO") via the State of Colorado |
| Services/Supplies to be provided: | Body Armor and Ballistic Resistant Products |
| Why are the Services/Supplies being obtained via a piggyback or cooperative contract (as opposed to issuing a solicitation or obtaining quotes): | The piggyback agreements #198466 and 198468 were procured by the State of Colorado for shared goods/services for use by state/local government, to streamline purchasing for local governments, provide |

| | |
|--|--|
| | strategic sourcing, and promote cost-effective use of shared services. |
|--|--|

Procurement Code, Section 38.41(C)(5) AND 38.47:

§ 38.41(C)(5) *Piggyback* purchases. The CPO (Chief Procurement Officer) may procure, without following formal solicitation procedures, all goods, supplies, materials, equipment, and services that are the subject of contracts with the state, its political subdivisions, the United States government, other governmental entities, or a corporation not for profit whose members are governmental entities, public officers, or any combination thereof ("piggyback"), provided that the goods, supplies, materials, equipment, or services are the subject of a price schedule negotiated by the entities listed above and is based strictly on competitive bids, quotations, or competitive proposals and not on any preference. Utilization of other governmental entities' contracts shall be permitted only during the term of the other governmental entity's contract.

§ 38.47 Cooperative Purchasing. The CPO shall have the authority to join with other governmental entities in cooperative purchasing plans when the best interest of the City is served.

| No. | Piggyback Justification Criteria | YES | NO | COMMENT |
|-----|--|-----|----|--|
| 1 | Is the piggyback contract's pricing/terms more favorable than pricing/terms we would obtain from issuing our own solicitation or obtaining our own quotes? Were alternative contracts evaluated to determine that the City is obtaining the most advantageous contract pricing? Please explain. | Yes | | Yes, the NASPO government pricing is more favorable than the pricing we would obtain from our solicitation/quotes. |
| 2 | Will use of the piggyback contract save City staff administrative time, efforts and resources? Please explain. | Yes | | It will save bid time, and provide strategic sourcing, and cost savings. |
| 3 | Will the requested services/supplies be purchased with funds other than grant funds or funds that prohibit the use of piggybacking? If you answered "NO", state the grant source and provide documentation proving piggybacking or cooperative purchasing is allowed by the grantor. | Yes | | FY26 operational funds |

***If you answered "No" to any of the questions above in this section, please disregard piggybacking the desired services/supplies and terminate any further completion of this form unless otherwise granted administrative approval to piggyback by authorized City Management or Procurement staff.**

| No. | ITEMS VERIFIED | YES | NO | COMMENT |
|-----|---|-----|----|--|
| 4 | Piggyback/Cooperative Contract and Awarding Agency documentation are attached? This includes: <ul style="list-style-type: none"> • Solicitation Packet; • Vendor's Original Bid/Proposal to the Solicitation • Bid/Evaluation Tabulation; • Award Notice; • Executed Contract and any Amendments; • Any additional relevant documents | Yes | | Please see attached. |
| 5 | Piggyback Contract is Valid? Please state the contract expiration and renewal dates. | Yes | | Current term: 05/01/2025- 04/30/2027 Renewal term: three additional one-year renewals |

| | | | | |
|----|--|-----|--|---|
| 6 | Does the piggyback contract allow the utilization of the contract by other entities, including use in the state of FL if it's an out of state contract? Please explain. | Yes | | NASPO ValuePoint is a national cooperative purchasing program that permits the use of its contracts by local government entities for shared goods/services. |
| 7 | Was the contract awarded through a solicitation or other acceptable competitive process that was publicly advertised? If yes, please provide the solicitation number. | Yes | | RFP-SPCO-AR-25-03 http://colorado.gov/vss |
| 8 | Goods/Services/Pricing requested by the Using Department(s) match those allowed under the piggyback contract and do not extend beyond the expiration date of the piggyback contract? Please explain. Note: All vendor quotes or cost proposals prepared for the City must match the piggyback pricing and must reference the piggyback contract/number. | Yes | | Yes, both the GH Armor Systems and Point-Blank Enterprise, Inc. products are allowed. |
| 9 | Does the piggyback contract have acceptable terms and conditions? Please explain. | | | The Department reviewed the contract terms and conditions and deemed them acceptable. |
| 10 | Piggyback Contract Certificate(s) of Insurance (COI) is acceptable to the City's Risk Management? Please attach COI/Risk approval, if applicable. | N/A | | |
| 11 | Piggyback Contract has Warranty Conditions? If yes, please list section or attach a copy of the warranty details. | Yes | | GH Armor - 5 years on the panels and 18 months on the carriers. Point Blank - 5 years on the panels and 18 months on the carriers. |
| 12 | Piggyback Contract has liquidated damages? If yes, provide the daily liquidated amount or alternative damages. | Yes | | Section 6.10.3 of the master agreement |

REQUESTING DEPARTMENT RECOMMENDATION

Note: By signing and returning this form, you are verifying and acknowledging that you have reviewed all portions (scope, terms, conditions, pricing, etc.) of the requested contract(s) and recommend its/their approval to the Office of Procurement based on compliance with the City's procurement requirements and all applicable laws and regulations to the best of your knowledge.

Signed by:



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Requestor's Signature:

Date: 11/20/2025

DocuSigned by:



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Director's Signature:

Date: 11/20/2025

Initial



OFFICE OF PROCUREMENT APPROVAL

DocuSigned by:



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Chief Procurement Officer's Signature:

Date: 12/3/2025



NASPO ValuePoint Master Agreement Terms and Conditions

For Body Armor and Ballistic Resistant Products

A Contract for the NASPO ValuePoint Cooperative Purchasing Program
Acting by and through the **State of Colorado** (Lead State)

**Department of Personnel & Administration
State Purchasing & Contracts Office
1525 Sherman Street, 5th Floor
Denver, CO 80203**

And

**Point Blank Enterprises, Inc.
2102 SW 2nd St.
Pompano Beach, FL 33069**

Master Agreement Number: 198468

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MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Accessory** means a body armor component that is detachable or removable from the body armor and is intended to provide an extended area of coverage protection against threats that

may include ballistic threats, stabbing, fragmentation, blunt impact, or a combination of threats. (ASTM Terminology E3005)

1.3 **ASTM Verification Mark** means a product that has received notice authorizing use of the ASTM verification mark. The name of the standard to which the product is verified shall be stated directly under the ASTM Mark.

1.4 **Authorized Distributor/Distributor** means the Contractor's authorized sales representative that must be certified by the Contractor to provide fit services and sales to a Purchasing Entity. An entity that purchases products, takes title, stocks, maintains inventory, resells the product to end-users, and has the ability to do on-site measurements. Also referred to as a subcontractor for the purposes of this solicitation.

1.5 **Ballistic Panel** means a type of armor panel intended to provide the wearer ballistic resistance. (ASTM Terminology E3005)

1.6 **Ballistic-Resistant Accessories** Shoulder, neck, groin, or other ballistic resistant accessories placed on the price list that are not verified or certified at the time of Request for Proposal. Prior to listing on the ASTM Verified Products List, these products will be located on the Non-Market Basket List – Products that are not verified or certified. When ASTM standards are completed for these accessories, Contractor is expected to have products verified to these standards.

1.7 **Ballistic-Resistant Helmets** means helmets verified to ASTM E3368/E3368M. Helmets not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified.

1.8 **Ballistic-Resistant Shields** means shields verified to ASTM E3347/E3347M. Shields not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified.

1.9 **Body Armor** means an item of personal protective equipment intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005)

1.10 **Carrier** means a garment whose primary purpose is to retain the armor panel(s) or plate(s) and provide a means of supporting and securing the armor panel(s) or plate(s) to the wearer. (ASTM Terminology E3005)

1.11 **Combination Armor** means a type of body armor intended to protect the wearer from both ballistic threats and stabbing. Combination armor is sometimes called dual-threat or multiple-threat armor. (ASTM Terminology E3005)

1.12 **Concealable Body Armor** means a vest designed to be worn under the shirt (uniform or undercover) or in a carrier that looks like a uniform shirt so that it is not easily seen. (ASTM Terminology E3005)

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

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

1.15 **Hard Armor** means an item of personal protective equipment that is constructed of rigid materials and is intended to protect the wearer from threats that may include ballistic threats,

stabbing, fragmentation, or blunt impact, or combinations thereof; synonymous with hard armor plate and plate. (ASTM Terminology E3005)

1.16 In Conjunction With Armor means soft or hard armor that is designed to provide a specific level of ballistic protection only when layered with a specific model(s) of body armor. (ASTM Terminology E3005)

1.17 Insert means a removable unit of protective material (soft armor or hard armor) intended to be placed into a special pocket on a carrier to enhance protection in a localized area. (ASTM Terminology E3005)

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

1.19 Lead State means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.20 Manufacturer means a company that, as its primary business function, designs, assembles, and has the NIJ CPL listing, or ASTM verification for the products being sold under negotiated Master Agreement.

1.21 Master Agreement means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

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

1.23 NIJ means the National Institute of Justice.

1.24 NIJ Compliant Products List (NIJ CPL) means the list of models certified by NIJ to be compliant with an applicable standard.

1.25 NIJ CTP means the NIJ program that certifies body armor models that meet the requirements of the most current version of the relevant NIJ standard.

1.26 NIJ Mark means the NIJ certification mark, registered with the U.S. Patent and Trademark Office, that is used to communicate a product’s compliance with the NIJ CTP.

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

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

1.29 Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws

of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

- 1.30** **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.31** **Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.32** **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- 1.33** **Soft Armor** means an item of personal protective equipment constructed of pliable/flexible materials intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005)
- 1.34** **Stab Panel** means a type of armor panel intended to provide stab resistance. (ASTM Terminology E3005)
- 1.35** **Tactical Body Armor** means a vest designed to be worn over the uniform shirt in a load bearing carrier that accepts various equipment. Equipment may include holsters, magazines, radios, or accessories. (ASTM Terminology E3005)
- 1.36** **Threat Level** means the rated level of protection, according to the relevant standard for the body armor or ballistic-resistant product.
- 1.37** **Trauma Pack** means a soft insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005)
- 1.38** **Trauma Plate** means a hard insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005)
- 1.39** **Vest** means a type of body armor intended to protect the wearer's torso. (ASTM Terminology E3005)

II. Parties and Term of Master Agreement

- 2.1** **Parties.** This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and Point Blank Enterprises, Inc. (hereinafter called "Contractor"), for the procurement of Body Armor and Ballistic Resistant Products as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State agree to the terms and conditions contained herein.
- 2.2** **Initial Term.** The initial term of this Master Agreement is for two (2) years, with a Contract Performance Beginning date of the later of May 1, 2025 or the Effective Date. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

- 2.3** **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.4** **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1** **Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** NASPO ValuePoint Master Agreement, including all Exhibits;
 - 3.1.3** A Purchase Order or Scope of Work (Exhibit A)/Specifications issued against the Master Agreement;
 - 3.1.4** The Solicitation RFP-SPCO-AR-25-03, Body Armor and Ballistic Resistant Products;
 - 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2** **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3** **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

IV. Participants and Scope

- 4.1** **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2** **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the

Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.4 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.5 Participating Entities.

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

- 4.5.1.1** Political subdivisions, public agencies, and service districts;
- 4.5.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
- 4.5.1.3** Federally recognized tribes;
- 4.5.1.4** Quasi-governmental entities; and
- 4.5.1.5** Eligible non-profit organizations.

4.5.2 Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

4.6 **Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.7 **Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and

applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.8 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.9 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

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

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). By placing an Order under this Master Agreement, a Purchasing Entity agrees to have their data (i) included in reports submitted by Contractor to NASPO ValuePoint and (ii) used by NASPO ValuePoint as set forth in this Master Agreement without limitation, unless otherwise requested in writing by the Purchasing Entity and agreed to in writing by

NASPO. Timely and complete reporting of Sales Data by Contractor is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

- 5.3.2 *Summary Sales Data.*** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 *Detailed Sales Data.*** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 5.3.4 *Sales Data Crosswalks.*** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- 5.3.5 *Executive Summary.*** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.
- 5.3.6 *Obligation to Act in Good Faith.*** The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of

which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section V. Nothing in this Section 5.3.6 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

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

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

5.5 NASPO ValuePoint eMarketPlace

- 5.5.1** The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.
- 5.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.

- 5.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.
- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms, products, services, and pricing of this Master Agreement.
- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. All product lists provided on the eMarketplace must be approved by the Lead State. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (*e.g.*, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.
- 5.5.11** Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

- 5.5.11.1** Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.
- 5.5.11.2** Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.
- 5.5.11.3** NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.
 - 5.5.11.3.1** Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.
 - 5.5.11.3.2** Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.
 - 5.5.11.3.3** eQuoting. NASPO will work with Contractor to set up participation and use to provide eQuotes through the NASPO eMarketPlace. This requirement would be in addition to any requirement to provide a hosted catalog or punchout site.
- 5.5.12** Hosted catalogs and punchout sites will provide all of the eMarketPlace standard data elements/information including, but not limited to, the following:
 - 5.5.12.1** The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;
 - 5.5.12.2** A Lead State contract identification number for this Master Agreement;
 - 5.5.12.3** Detailed product line item descriptions;
 - 5.5.12.4** Pictures illustrating products, services, or solutions where practicable; and
 - 5.5.12.5** Any additional NASPO, Lead State, or Participating Addendum requirements.
- 5.6 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor.

Cancellation based on nonuse or under-utilization will not occur sooner than two years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

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

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

VI. Pricing, Payment & Leasing

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

6.1.1 All prices and minimum rates must be guaranteed for the initial term of the Master Agreement.

6.1.2 Following the first twelve (12) months of the Master Agreement period, any request for price adjustments must be for an equal guarantee period and must be received by the Lead State Contract Administrator at least 120 days prior to the requested effective date. Requests for price adjustments 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 pricing will be allowed prior to the effective date unless the pricing is decreased.

6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

6.1.4 No retroactive adjustments to prices or rates will be allowed.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

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

VII. Ordering

7.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

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

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

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

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

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

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement’s terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed

after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement or as adjusted by agreement of the Purchasing Entity and Contractor (i.e. volume discount, state-specific administrative fee, etc.);
- 7.6.6** A not-to-exceed total for the products or services being ordered; and
- 7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must 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.

7.8 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.

VIII. Shipping and Delivery

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

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

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

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

becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

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

IX. Inspection and Acceptance

9.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

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

X. Warranty

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

XI. Product Title

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

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

XII. Indemnification

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

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

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

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

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

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property

Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

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

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

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

13.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

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

13.5 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 **Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 **Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage

may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

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

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

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

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

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

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

14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

- 14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
- 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
- 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately

compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

- 14.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.
- 14.2.6 Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

14.3 Assignment/Subcontracts

- 14.3.1** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- 14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

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

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

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in

whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

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

14.8 Defaults and Remedies

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

14.8.1.1 Nonperformance of contractual requirements;

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

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

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

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

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

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

14.8.3.1 Any remedy provided by law;

14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

- 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.8.3.5** Suspension of Contractor's performance; and
 - 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9** **Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.10** **Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

- 14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not

limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

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

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

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

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

14.14 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

SIGNATURE PAGE
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

CONTRACTOR

Point Blank Enterprises, Inc.

DocuSigned by:

 Hoyt Schmidt

D463EFDF86DE4A5...

**By: Hoyt Schmidt Executive Vice President of
Commercial Business**

Date: 4/29/2025

STATE OF COLORADO

Jared S. Polis, Governor

**Department of Personnel and Administration,
State Purchasing and Contracts Office**

Tony Gherardini, Executive Director

DocuSigned by:

 John Chapman

EF45AFDEB51E414...

By: John Chapman State Purchasing Manager

Date: 4/29/2025

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

DocuSigned by:

 Nathan Manley

66856696CC1A43A... Nathan Manley

Effective Date: 4/29/2025

In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated above by the State Controller or an authorized delegate.

Exhibit A Scope of Work

I. Master Agreement Deliverables

1.1 Body Armor Products must meet the NIJ, ASTM, and/or any additional product standards as requested by the Lead State for the price list. As new standards are published, Contractor may or may not have transition dates provided to add new products to the Master Agreement. As products are no longer maintained on the NIJ CPL or ASTM Verified Products List, the Lead State will remove them from Contractor's Price List, if not removed by Contractor. If new verification and/or certification programs are completed by NIJ, ASTM, or other recognized conformity assessment body, the Lead State may request new products from Contractor. When new or revised standards are available, Contractor will be expected to submit products compliant with the new or revised standards during the term of the Master Agreement. If new standards are published in the last few months of the last term of the Master Agreements Contractor will not be required to submit new products compliant with new or revised standards. Contractor will not be required to provide all product types.

1.2 Product Standards

- NIJ Standard 0101.06, Ballistic Resistance of Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ 0101.07, Ballistic Resistance of Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- NIJ Standard 0115.00, Stab Resistance of Personal Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ Standard 0115.01, Stab Resistance of Personal Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- ASTM E3368/E3368M, Standard Specification for Ballistic-Resistant Helmets Worn by U.S. Public Safety Officers also to include ballistic resistant face shields when on Verified Products List. Helmets not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- ASTM E3347/E3347M Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers. Shields not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- New or revised product standards for body armor and ballistic-resistant products. Products compliant with new or revised product standards may be added to price lists if requested and approved by the Lead State. Requested additions to price list may or may not be approved in a timely manner.

1.3 Product Category

- **Ballistic-resistant Vest:** NIJ Standard 0101.07 Protection Levels HG1, HG2, RF1, RF2, RF3. NIJ Standard 0101.06 Products will be accepted on the price lists until the NIJ CPL for 0101.06 is no longer online. When it is no longer maintained by NIJ these products will not be acceptable on the Master Agreements.
- **Stab-resistant Vest:** NIJ Standard 0115.00 or 0115.01 Spike or Edged Blade Protection Levels 1, 2, and 3. Vest models shall be listed on the NIJ Stab Armor CPL. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **Combination Vest:** Ballistic and Spike and/or Edged Blade: All vests offered as combination vests shall be listed on both the NIJ Ballistic Armor CPL and the NIJ Stab Armor CPL. The ballistic panel shall have the NIJ mark on the label. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **In Conjunction With Armor:** NIJ -0101.07 Protection Levels HG1, HG2, RF1, RF2, RF3. The ballistic panels shall have the NIJ mark on the label.
- **K-9 Ballistic-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified
- **K-9 Combination Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **K-9 Stab-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **Ballistic-resistant Helmets:** ASTM Standard Specification for Ballistic Resistant-Resistant Helmets Worn by U.S. Public Safety Officers ASTM E3368/E3368M. To include ballistic resistant face shields as well when listed on the Verified Products List. Models shall be listed on the ASTM Verified Products List.
- **Ballistic-resistant Shields:** ASTM Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers E3347/E3347M. Models shall be listed on the ASTM Verified Products List.
- **Carriers:** Carriers are an integral part of a vest (providing no ballistic protection), and some types of carriers are: Concealable, uniform shirt, and tactical.

1.4 **Accessories:** includes but is not limited to the following items:

- **Ballistic-resistant:** As of the date of the posting of this RFP, NIJ, ASTM or other group does not certify or verify ballistic-resistant accessories. During the term of this Master Agreement, when certification or verification programs are implemented for any of these categories, including shoulder, neck, groin, and other ballistic-resistant accessories, Contractor will be expected to provide new products in these verification or certification programs. Transition dates may or may not be provided for adding new items to price lists.
- **Groin, yoke, bicep, collar, shoulder, and throat protectors:** To be added to Market Basket list after verification or certification programs are implemented.
- **Non-ballistic-resistant Products**
- **Trauma pack:** Located on Non-Market Basket list with products that are not verified or certified.
- **Trauma plate:** Located on Non-Market Basket list with products that are not verified or certified.
- **Insert (soft armor or hard armor)** Located on Non-Market Basket list with products that are not verified or certified.
- **Pouches:** Located on Non-Market Basket list with products that are not verified or certified.

- **Replacement carrier straps:** Located on Non-Market Basket list with products that are not verified or certified.
- **ID Patches:** Located on Non-Market Basket list with products that are not verified or certified.
- **Carry bags for concealable vest, tactical vest, shield, and helmet:** Located on Non-Market Basket list with products that are not verified or certified.
- **Helmet equipment rails, pads, and retention/suspension system:** Located on Non-Market Basket list with products that are not verified or certified.
- **Shield lights, shoulder straps, logos:** Located on Non-Market Basket list with products that are not verified or certified.

II. Product Specifications

Body Armor and Ballistic-Resistant Products must be ordered new and unused, and shall not contain re-used/remanufactured or re-purposed components.

Body Armor and Ballistic-resistant Products that are listed on NIJ-CPL, ASTM-Verified Products List, or other verification or certification program, shall be constructed identically to the original model tested and certified or verified to comply with the NIJ or ASTM Standards referenced in this solicitation or provided by ASTM, NIJ or other body as approved by the Lead State. For body armor and ballistic-resistant products not certified by NIJ or verified by ASTM, the Contractor shall specify the standard(s) and threats against which the product was tested, shall provide attestation of compliance with the standard(s), and shall provide (upon request of the Lead State or Purchasing Entity) the test report.

All materials and construction shall be of the same as reported to NIJ in the “Build Sheet” or in the “submittal package” which lists the materials and construction for the model for NIJ certified products. All materials and construction shall be the same as in the ASTM-required build sheet or submittal package for ASTM verified products.

Workmanship shall be first quality, with no defects that might affect performance, wearability, or durability of the vest.

Products intended to be worn by end users shall not be “bulk ordered” inventory, nor substantially tailored or modified “off the shelf” items. Items worn by end users are to fit personnel as needed, since altering products could potentially change the performance aspects originally tested under NIJ Compliance Testing Program or ASTM Verification Process.

Each product intended to be worn by end users shall be made to professionally conducted measurements intended to fit a specific individual. Under no circumstances shall measurements result in a product that does not properly fit and/or provide adequate protective coverage for that individual.

All vest measurements must be made according to Contractor procedures and take into account all clearances of panels and duty belts as described in the most recent version of ASTM E3003, Standard Practice for Measurement of Body Armor Wearers and Fitting of Armor.

Available sizes for soft armor vests (handgun protection) shall be consistent with the NIJ Compliance Testing Program requirements for the size range listed on the NIJ CPL.

All Body Armor Products that include the option of additional trauma packs, trauma plates, or inserts shall have the pocket/holder securely attached to keep the inserts in position while worn.

All fasteners, including hook and pile (Velcro), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

The label shall withstand normal wear and cleaning and shall remain legible and attached throughout the entire warranted life of the product. All Body Armor shall be labeled with strict adherence to any applicable laws and regulations and follow the appropriate labeling requirements according to NIJ Standards for body armor or ASTM Verification Mark standards for ballistic-resistant products other than body armor, as updated or amended. This shall include at least the following for applicable products:

- a)** Name of Contractor.
- b)** Location of Contractor.
- c)** Model designation from the relevant NIJ CPL or ASTM Verified Products List (The model designation number shall match the submitted price list and letter of certification/verification.)
- d)** ASTM Verification Mark and name of the standard to which the product is verified
- e)** NIJ Mark and identifier for the relevant NIJ Standard, such as NIJ Standard- 0101.06, NIJ Standard-0101.07 or NIJ Standard-0115.00 or NIJ Standard- 0115.01 (Combination armor shall indicate both).
- f)** Completed manufacturing date
- g)** Lot number.
- h)** Unique serial number.
- i)** Brand name and catalog number.
- j)** A “Property of” space so Purchasing Entity can enter an agency or officer name.
- k)** An “Asset Number” space so Purchasing Entity can enter as needed.
- l)** Basic care and maintenance instructions.
- m)** For body armor and shields, basic care and maintenance instructions.
- n)** Size of product.
- o)** Ballistic protection warranty period.

Contractor, agent, and/or distributor must have the serial numbers stored in a readily accessible database.

Ballistic-resistant components must have at least a 5-year Contractor's warranty.

All carriers must have at least an 18-month Contractor's warranty.

Warranty periods specified shall begin when Body Armor Products are delivered and accepted following inspection by Purchasing Entity.

All fasteners, including hook and pile (Velcro®), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

III. Contractor Responsibilities and Tasks

3.1 Customer Service

Contractor shall provide a single point of contact for all issues and questions regarding the goods and services provided, including, but not limited to: pricing, product issues, delivery, status of orders, and Contract issues.

Contractor must provide full service and support for awarded products during normal business hours.

Distributors must be able to service Purchasing Entities within a reasonable time frame, and must have the ability to travel to the Purchasing Entity's specified location once an order, regardless of quantity, has been received.

Distributors shall offer instruction or provide presentations, as requested by Purchasing Entities, regarding the care, usage, and limitation of bullet-resistant and stab-resistant armor.

3.2 Ordering and Invoicing Specifications

All items subject to NIJ compliance testing must be listed on the NIJ CPL with a model status of "active" on the date the Order is placed. Items not subject to NIJ compliance testing or ASTM Verification shall have evidence of compliance with an appropriate standard.

Contractor may not provide Body Armor and Ballistic Resistant Products that have not been approved by the Lead State.

The price list shall be ceiling pricing. Contractor may offer lower pricing on a per Order basis to Purchasing Entities; likewise, Purchasing Entities may request lower pricing on a per Order basis only from Contractor.

All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated. Contractor is not permitted to send Price List updates directly to NASPO ValuePoint.

All requested changes to price lists, additional products requested to be added, products removed, price modifications or other changes will be provided to the Lead State for approval and will be provided with colored text, or strike through colored text. If price list changes are not clear they may be requested to be modified for clarification.

Pricing must include all shipping, delivery and service costs associated with the product.

All sizing, measurements, and final fitting shall be done at no expense to, and shall be scheduled at the convenience of, the Purchasing Entity.

All orders, regardless of quantity, shall be delivered to Purchasing Entities within sixty (60) calendar days after Manufacturer receipt of order.

The Contractor must coordinate delivery with the Purchasing Entity specified on the order.

Body Armor improperly fitted to an individual wearer shall be altered or replaced and delivered to the individual within thirty (30) calendar days by the Contractor at no expense to the Purchasing Entity.

Product invoice shall contain, at a minimum:

- a)** Name of Purchasing Entity.
- b)** Order date.
- c)** Description of the product ordered.
- d)** NIJ CPL model designation and Threat Level.

- e) Serial number.
- f) Price.
- g) Any additional information required by the Purchasing Entity.

3.3 Packaging Requirements

All Body Armor and Ballistic-resistant products shall be packaged in such a manner as to ensure delivery in undamaged condition.

All packages must be labeled to indicate, at minimum, the Contractor's name and order number and the Purchasing Entity's name, address, and contact person.

Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.

3.4 Delivery Requirements

All deliveries must be FOB Destination; freight prepaid by the Contractor, to the Purchasing Entity's specified location. Responsibility and liability for loss or damage for all orders will remain with the Contractor until final inspection and acceptance, when responsibility will pass to the Purchasing Entity, except the responsibility for latent defects, fraud, and the warranty obligations.

All deliveries shall be made during normal working hours, which may vary for each Purchasing Entity of each Participating State.

It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.

The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.

The delivery days and delivery hours shall be established after contract award by each individual Purchasing Entity.

3.5 Recycling

Contractors are encouraged to facilitate recycling of used ballistic panels and other products on behalf of Purchasing Entities. Details listed in Exhibit E.

Recycling programs may be operated in-house by the Contractor, or through contractual or other arrangements which the Contractor shall establish with reputable domestic firms who have an established history of recycling ballistic materials and other products and providing chain of custody documentation.

Expired, unsafe and aged ballistic vests and other personal protection gear are transported to a processor where the material is processed and rendered unusable in ballistic protection applications. After the deconstruction of ballistic panels and/or other technical materials, the fiber is converted into end-use items such as gloves, brake pads, boat ropes, tire treads, etc. This will aid in keeping sensitive ballistic material out of circulation.

Recycled ballistic panels shall be tracked by serial number throughout the recycling process.

IV. Lead State Responsibilities and Tasks

4.1 Product and Distributor List Revisions

As new products are made available; Contractor may submit these products for consideration by the Lead State. Only products that are new item numbers (i.e., having different materials, styles and/or construction) will be considered. Contractor may submit new products once per quarter by the 1st day of the quarter, and final approval of new products is at the discretion of the Lead State. New approved products will be listed on the website after approval by the Lead State. For new products submitted after the first of the month, having errors in the submission or errors in the items, or requested changes from the Contractor after initial approval, may have delays in approval for addition to the Master Agreement.

New products receiving Certification or Verification to the NIJ CPL or the ASTM Verified Products List may be added to the price list at the currently existing MSRP/List Price Discount Percentages in between quarters if requested by Contractor and at the discretion and approval of the Lead State.

Contractor shall notify the Lead State when products previously approved are suspended or removed from the NIJ CPL (e.g., NIJ Safety Notice or NIJ Advisory Notice issued) or removed from the ASTM Verified Products List.

Distributor lists to be provided to the Lead State when changes are requested by Contractor. Agent/Distributor form to be provided with all update requests.

After the first (12) months of the contract, the MRSP/List Price Discount Percentages will be used as one part of a guideline for price change reviews; other parts of the guideline include, but are not limited to, the overall increase from the current contract BID Price.

Exhibit B – Product and Price List

Go to NASPO ValuePoint Master Agreement web page for current Lead State and Contractor Approved Product and Price List.

Exhibit C – Agents and Distributors by State

Go to NASPO ValuePoint Master Agreement web page for current Lead State and Contractor Approved Agents and Distributors by State list.

Exhibit D – Authorized Distributor Form

To be completed and returned to the Lead State for review and approval at the Lead State's discretion with any Distributor List Update requests.

Manufacturer/Contractor Name

Master Agreement Number

(Check one)

The Agent/Distributor listed below is an authorized reseller and will provide Goods and Services in accordance with the State of Colorado and NASPO ValuePoint Request for Proposal and Master Agreement.

The Agent/Distributor listed below will no longer provide Goods and Services under the NASPO ValuePoint Body Armor and Ballistic Resistant Products Master Agreement.

Agent / Distributor Company Name

State(s) Serviced by Agent/Distributor

Date(s) Training Completed (for new Distributors)

State(s) Serviced by Agent/Distributor

Agent/Distributor Name

Address:

Phone (include Toll-Free, if available)

Contact Person(s)

Email Address(es)

FEIN

Agent/Distributor Website (If available)

Signed: _____ **Date:** _____
(Master Agreement Contractor)

Signed: _____ **Date:** _____
(Distributor Representative)

Exhibit E – Warranty and Recycling Plan

Recycling**Used Ballistic Vest/Component Recycle Program**

| | | |
|-------------|--------|---|
| Document #: | 800050 | Title: Used Ballistic Vest/Component Recycle Program |
|-------------|--------|---|

APPROVING OFFICIAL (S)

| Name | Title | Signature | Date |
|----------------|---------------------------------|-----------|-----------|
| Michael Sumner | V.P. of Quality and Engineering | On File | 12/4/2014 |
| Robert Taylor | Process Manager | On File | 12/4/2014 |
| Jeffrey Ortiz | QA Manager | On File | 8/28/2019 |

REVISION RECORD

| Rev. | Date | Section/Sub-Section/Paragraph | DCR# | Approved by (Initials): |
|------|-----------|--|--------|---------------------------|
| | | | | Proces Qualit VP of |
| 1 | 12/4/2014 | New Release | | RT MS |
| 2 | 8/28/2019 | Updated Section 5.1 to define that in addition to coordinating this with Customer Service that a RMA needs to be issued by Customer Service to the Customer that is Returning the Ballistics for Disposal. | 000599 | JO MS |
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Used Ballistic Vest/Component Recycle Program

1.0 Purpose

- 1.1** This procedure describes the processes for the management and execution of a Used Ballistic Vest/Component Recycle Program for Point Blank Enterprises Incorporated. The company or the entity that owns the vests are responsible for the freight to return the vest panels. Point Blank will dispose of the ballistic panels free of charge. **NO HARD PLATES ARE ACCEPTED.**

2.0 Responsibilities

- 2.1** The Returns Department is overall responsible for this program.
- 2.2** Customer Service is responsible for the daily operation and management of the Used Ballistic Vest/Component Recycle Program. Customer Service is responsible for receiving and processing the customer's request for this service within five days.
- 2.3** The Warehouse Manager is responsible for receiving, inventorying, marking boxes, and insuring secure and segregated storage of recycled ballistic vest.
- 2.4** The Returns Department is responsible for the inspection and verification of all incoming vests and components.
- 2.5** The Returns Department is responsible to ensure the vests get disposed and that the proper paperwork is assembled.

3.0 Definitions

For the purpose of the Used Ballistic Vest/Component Recycle Program, used ballistic vests are defined as follows:

- 3.1** Outdated Ballistic Vests/Components – Ballistic vests having panels that have passed their warranty period of 5 years.
- 3.2** Damaged Ballistic Vests/Components – Ballistic vests having ballistic panels whose ballistic protection has been compromised by bullet or fragment strikes, tears, cuts, holes in heat sealed ballistic covers, or exposure to harmful chemicals.
- 3.3** Request and Record of Used Ballistic Vest/Component Disposal – Request Record Ballistic Disposal Form (801060) and Req & Record Ballistic Form Continuation (801061) are provided to and initiated by customers when they have ballistic vests to recycle. This form contains all information required for a permanent record of every ballistic panel's disposition by serial number. The form may be used for a single vest/component or large numbers of products.

RMA- Return authorization Form.

4.0 Associated Resource Needs

- 4.1** Secure Storage Area
- 4.2** Supervision and manpower
- 4.3** Documentation system

5.0 Instructions

- 5.1 Requests from Customers:** Disposal Requests to recycle ballistic vests are received to PBE via e-mail or telephone through the PBE Customer Service organization. Customer Service will respond/request more information, if needed, and will send a RMA (331021) to the Requesting company/customer that is to be used on the associated paperwork. The RMA is required to be placed on the paperwork and is used to track this material at our incoming warehouse and for the completion of the destruction.
- 5.2 Packing Slip Information:** The heading information, types of vest/components and serial numbers of front and back panels are recorded on Form 801060 & 801061. This information is only needed to accompany the shipment for disposal. Only the carrier and ballistic can be sent for disposal. **DO NOT SEND HARD PLATES FOR DISPOSAL.**
- 5.3 Shipping Instructions:** Shipping is at the cost of the shipper and is the choice of the shipper. The packaged product to be returned needs to have the Vest Recycle Shipment Label (801062) placed on each box in order for the return to be routed correctly once it arrives at Point Blank Enterprises, Inc. The ship to address is: Point Blank Enterprises **1931 SW 2nd Street Pompano Beach, FL 33069.**
- 5.4 Packaging:** Vests will be packed in cardboard containers that are sturdy enough to withstand normal handling by a commercial carrier and weigh no more than 50 pounds each.
- 5.5 Disposal:** Once ready, the Vests/Components are taken to the cutting section and disposed of properly. There is no cost to the shipper for the actual disposal of the vests.
- 5.6 Records:** PBE will keep a record on file of the disposal in electronic format. A copy can be requested.

6.0 Forms and Records

- 6.1** 801060 Request Record Ballistic Disposal Form
- 6.2** 801061 Req & Record Ballistic Form Continuation
- 6.3** 801062 Vest Recycle Shipment Label
- 6.4** 331021 Return authorization Form (RMA)

Warranty

As used herein, Point Blank includes Point Blank Enterprises, Inc., and its brands including Point Blank Body Armor, PACA, PARACLETE, and Protective Products.

1. Warranty - Outer Shell Carrier

- 1.1. The outer shell carrier and other non-ballistic components are warranted to be free from material and manufacturing defects for 24 months from the date of issue to the individual user, as verified by the warranty card.
 - 1.1.1. During the warranty period, any garment having a manufacturing or material defect, as determined through inspection by an authorized Point Blank representative, will be repaired or replaced at no cost to the customer.
 - 1.1.2. The outer shell carrier warranty shall be void if the product has been altered, abused, or misused, stored improperly, or not cleaned in accordance with cleaning instructions.

2. Warranty - Soft Ballistic Component

- 2.1. The bullet/stab-resistant elements are warranted to perform to their NIJ-certified standard for a period of five years from the date of issue to the individual user, as verified by the warranty card.
- 2.2. The bullet/stab-resistant elements of this system have been tested and certified by the National Institute of Justice and passed the compliance requirements of the NIJ Standard for Ballistic Resistance of Personal Body Armor.
- 2.3. The ballistic elements are warranted to be of the same construction and design as the original NIJ certified model listed on the label.
- 2.4. During the warranty period, any soft ballistic component having a manufacturing or material defect, as determined through inspection by an authorized Point Blank representative, will be repaired or replaced at no cost to the customer.
- 2.5. During the warranty period, should the soft body armor ballistic panel cover be compromised (cut, torn or frayed); it should not be worn and immediately returned to the manufacturer for inspection and repair. If the damage is the result of normal wear and tear, the damage will be repaired free of charge. If however, the damage is the result of improper care, storage or abuse, determined solely by Point Blank, then Point Blank will advise the owner of recommended repair or replacement costs.
- 2.6. The ballistic/stab-resistant elements of this system will reduce the possibility of serious physical injury to the wearer in the areas covered by the ballistic or stab elements.
- 2.7. There should be no expectation of bullet or stab resistance in areas not covered by the ballistic or stab element. The ballistic or stab element is not warranted to be bulletproof or stab proof.

3. Warranty – Helmet, Ballistic Plate, Blade Plate and Ballistic Shield

- 3.1. The bullet/stab-resistant elements are warranted to perform to their NIJ-certified standard for a period of five years, (except as noted below), from the date of issue to the individual user, as verified by the warranty card. In the case of steel plates, the bullet/stab-resistant elements are warranted to perform to their NIJ-certified standard for a period of ten years from the date of issue to the individual user, as verified by the warranty card.
- 3.2. The bullet/stab-resistant elements of this system have been tested and certified by the National Institute of Justice and passed the compliance requirements of the NIJ Standard for Ballistic Resistance of Personal Body Armor, if so indicated.
- 3.3. The ballistic elements are warranted to be of the same construction and design as the original NIJ certified model listed on the label, if so indicated.
- 3.4. During the warranty period, any plate or ballistic shield having a manufacturing or material defect, as determined through inspection by an authorized Point Blank representative, will be repaired or replaced at no cost to the customer.
- 3.5. The ballistic/stab-resistant elements of this system will reduce the possibility of serious physical injury to the wearer in the areas covered by the ballistic or stab elements.
- 3.6. Should the helmet, blade plate, ballistic plate or shield be compromised, by misuse, drops, visible cracks, its use should be discontinued and immediately returned to the manufacturer for inspection. If the damage is the result of normal wear and tear, the damage will be repaired free of charge. If however, the damage is the result of improper care, storage or abuse, determined solely by Point

Blank, then Point Blank will advise the owner of recommended repair or replacement costs.

- 3.7. There should be no expectation of bullet or stab resistance in areas not covered by the ballistic or stab element. The ballistic or stab element is not warranted to be bulletproof or stab proof. Refer to the warranty provided by the original equipment manufacturer (OEM) helmet, blade plate and single curve ballistic shield.
- 3.8. Point Blank warranty disclaimer: In the case of improper use of a ballistic item, Point Blank Enterprises assumes no liability for any injury to persons or damage to the ballistic item.
- 4. Point Blank will honor the above warranty for collective purchasing arrangements only when all entities involved have been identified and agreed upon by Point Blank Enterprises prior to purchase.
- 5. **Warranty – OEM Products** - Such products are sold by Point Blank "as is". Unless noted otherwise, Point Blank makes no warranty or representation for such equipment.
- 6. **This warranty does not cover and is void for:**
 - 6.1. Any garment, shield, plate or helmet altered or modified in any way other than Point Blank/ authorized factory alterations.
 - 6.2. Any ballistic or stab element that has been altered or modified in any way other than Point Blank/ authorized factory alterations.
 - 6.3. Any ballistic or stab element not in a Point Blank outer shell carrier, except as approved by Point Blank.
 - 6.4. Damage as a result of abuse or misuse.
 - 6.5. Damage as a result of improper storage or maintenance.
 - 6.6. Penetrations as a result of ballistic or stab testing.
 - 6.7. The results of any specific ballistic or stab testing.
 - 6.8. Injury as a result of bullets or other projectiles or instruments not impacting the ballistic or stab element.
- 7. **Saves Program** - Should the bullet/stab resistant elements of a Point Blank system be damaged while preventing physical injury to the wearer, these components will be replaced free of charge by Point Blank.

The warranted items herein are expressly in lieu of other warranties, express or implied, including the implied warranties of merchantability, fitness for particular purpose and other warranties arising from a course of dealing, usage or trade. There are no warranties, express or implied, including the implied warranty of merchantability, which extend beyond the description on the face hereof. There are no warranties, express or implied, that extend beyond the warranty period set forth herein.



NASPO ValuePoint Master Agreement Terms and Conditions

For Body Armor and Ballistic Resistant Products

A Contract for the NASPO ValuePoint Cooperative Purchasing Program
Acting by and through the **State of Colorado** (Lead State)

**Department of Personnel & Administration
State Purchasing & Contracts Office
1525 Sherman Street, 5th Floor
Denver, CO 80203**

And

**GH Armor Systems Inc.
13386 International Parkway Unit 2
Jacksonville, FL 32218-2383**

Master Agreement Number: 198466

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MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Accessory** means a body armor component that is detachable or removable from the body armor and is intended to provide an extended area of coverage protection against threats that

may include ballistic threats, stabbing, fragmentation, blunt impact, or a combination of threats. (ASTM Terminology E3005)

1.3 **ASTM Verification Mark** means a product that has received notice authorizing use of the ASTM verification mark. The name of the standard to which the product is verified shall be stated directly under the ASTM Mark.

1.4 **Authorized Distributor/Distributor** means the Contractor's authorized sales representative that must be certified by the Contractor to provide fit services and sales to a Purchasing Entity. An entity that purchases products, takes title, stocks, maintains inventory, resells the product to end-users, and has the ability to do on-site measurements. Also referred to as a subcontractor for the purposes of this solicitation.

1.5 **Ballistic Panel** means a type of armor panel intended to provide the wearer ballistic resistance. (ASTM Terminology E3005)

1.6 **Ballistic-Resistant Accessories** Shoulder, neck, groin, or other ballistic resistant accessories placed on the price list that are not verified or certified at the time of Request for Proposal. Prior to listing on the ASTM Verified Products List, these products will be located on the Non-Market Basket List – Products that are not verified or certified. When ASTM standards are completed for these accessories, Contractor is expected to have products verified to these standards.

1.7 **Ballistic-Resistant Helmets** means helmets verified to ASTM E3368/E3368M. Helmets not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified.

1.8 **Ballistic-Resistant Shields** means shields verified to ASTM E3347/E3347M. Shields not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified.

1.9 **Body Armor** means an item of personal protective equipment intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005)

1.10 **Carrier** means a garment whose primary purpose is to retain the armor panel(s) or plate(s) and provide a means of supporting and securing the armor panel(s) or plate(s) to the wearer. (ASTM Terminology E3005)

1.11 **Combination Armor** means a type of body armor intended to protect the wearer from both ballistic threats and stabbing. Combination armor is sometimes called dual-threat or multiple-threat armor. (ASTM Terminology E3005)

1.12 **Concealable Body Armor** means a vest designed to be worn under the shirt (uniform or undercover) or in a carrier that looks like a uniform shirt so that it is not easily seen. (ASTM Terminology E3005)

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

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

1.15 **Hard Armor** means an item of personal protective equipment that is constructed of rigid materials and is intended to protect the wearer from threats that may include ballistic threats,

stabbing, fragmentation, or blunt impact, or combinations thereof; synonymous with hard armor plate and plate. (ASTM Terminology E3005)

1.16 In Conjunction With Armor means soft or hard armor that is designed to provide a specific level of ballistic protection only when layered with a specific model(s) of body armor. (ASTM Terminology E3005)

1.17 Insert means a removable unit of protective material (soft armor or hard armor) intended to be placed into a special pocket on a carrier to enhance protection in a localized area. (ASTM Terminology E3005)

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

1.19 Lead State means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.20 Manufacturer means a company that, as its primary business function, designs, assembles, and has the NIJ CPL listing, or ASTM verification for the products being sold under negotiated Master Agreement.

1.21 Master Agreement means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

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

1.23 NIJ means the National Institute of Justice.

1.24 NIJ Compliant Products List (NIJ CPL) means the list of models certified by NIJ to be compliant with an applicable standard.

1.25 NIJ CTP means the NIJ program that certifies body armor models that meet the requirements of the most current version of the relevant NIJ standard.

1.26 NIJ Mark means the NIJ certification mark, registered with the U.S. Patent and Trademark Office, that is used to communicate a product’s compliance with the NIJ CTP.

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

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

1.29 Participating Entity means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws

of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

- 1.30** **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.31** **Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.32** **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- 1.33** **Soft Armor** means an item of personal protective equipment constructed of pliable/flexible materials intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005)
- 1.34** **Stab Panel** means a type of armor panel intended to provide stab resistance. (ASTM Terminology E3005)
- 1.35** **Tactical Body Armor** means a vest designed to be worn over the uniform shirt in a load bearing carrier that accepts various equipment. Equipment may include holsters, magazines, radios, or accessories. (ASTM Terminology E3005)
- 1.36** **Threat Level** means the rated level of protection, according to the relevant standard for the body armor or ballistic-resistant product.
- 1.37** **Trauma Pack** means a soft insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005)
- 1.38** **Trauma Plate** means a hard insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005)
- 1.39** **Vest** means a type of body armor intended to protect the wearer's torso. (ASTM Terminology E3005)

II. Parties and Term of Master Agreement

- 2.1** **Parties.** This Master Agreement is entered into by and between the State of Colorado, acting by and through the Department of Personnel & Administration, State Purchasing & Contracts Office (hereinafter called the "Lead State"), and GH Armor Systems Inc. (hereinafter called "Contractor"), for the procurement of Body Armor and Ballistic Resistant Products as approved per this Master Agreement, for the benefit of Participating States, Entity's, and Purchasing Entities. The Contractor and the Lead State agree to the terms and conditions contained herein.
- 2.2** **Initial Term.** The initial term of this Master Agreement is for two (2) years, with a Contract Performance Beginning date of the later of May 1, 2025 or the Effective Date. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

- 2.3** **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.4** **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1** **Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** NASPO ValuePoint Master Agreement, including all Exhibits;
 - 3.1.3** A Purchase Order or Scope of Work (Exhibit A)/Specifications issued against the Master Agreement;
 - 3.1.4** The Solicitation RFP-SPCO-AR-25-03, Body Armor and Ballistic Resistant Products;
 - 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2** **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3** **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

IV. Participants and Scope

- 4.1** **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2** **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the

Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

4.3 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.4 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.5 Participating Entities.

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

- 4.5.1.1** Political subdivisions, public agencies, and service districts;
- 4.5.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
- 4.5.1.3** Federally recognized tribes;
- 4.5.1.4** Quasi-governmental entities; and
- 4.5.1.5** Eligible non-profit organizations.

4.5.2 Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

4.6 **Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

4.7 **Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and

applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

4.8 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.9 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 Applicability. NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 Administrative Fees

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

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). By placing an Order under this Master Agreement, a Purchasing Entity agrees to have their data (i) included in reports submitted by Contractor to NASPO ValuePoint and (ii) used by NASPO ValuePoint as set forth in this Master Agreement without limitation, unless otherwise requested in writing by the Purchasing Entity and agreed to in writing by

NASPO. Timely and complete reporting of Sales Data by Contractor is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

- 5.3.2 *Summary Sales Data.*** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 *Detailed Sales Data.*** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 5.3.4 *Sales Data Crosswalks.*** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- 5.3.5 *Executive Summary.*** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.
- 5.3.6 *Obligation to Act in Good Faith.*** The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of

which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section V. Nothing in this Section 5.3.6 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

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

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

5.5 NASPO ValuePoint eMarketPlace

- 5.5.1** The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.
- 5.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.

- 5.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.
- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms, products, services, and pricing of this Master Agreement.
- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. All product lists provided on the eMarketplace must be approved by the Lead State. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (*e.g.*, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.
- 5.5.11** Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

- 5.5.11.1** Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.
- 5.5.11.2** Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.
- 5.5.11.3** NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.
 - 5.5.11.3.1** Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.
 - 5.5.11.3.2** Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.
 - 5.5.11.3.3** eQuoting. NASPO will work with Contractor to set up participation and use to provide eQuotes through the NASPO eMarketPlace. This requirement would be in addition to any requirement to provide a hosted catalog or punchout site.
- 5.5.12** Hosted catalogs and punchout sites will provide all of the eMarketPlace standard data elements/information including, but not limited to, the following:
 - 5.5.12.1** The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;
 - 5.5.12.2** A Lead State contract identification number for this Master Agreement;
 - 5.5.12.3** Detailed product line item descriptions;
 - 5.5.12.4** Pictures illustrating products, services, or solutions where practicable; and
 - 5.5.12.5** Any additional NASPO, Lead State, or Participating Addendum requirements.
- 5.6 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor.

Cancellation based on nonuse or under-utilization will not occur sooner than two years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

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

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

VI. Pricing, Payment & Leasing

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

6.1.1 All prices and minimum rates must be guaranteed for the initial term of the Master Agreement.

6.1.2 Following the first twelve (12) months of the Master Agreement period, any request for price adjustments must be for an equal guarantee period and must be received by the Lead State Contract Administrator at least 120 days prior to the requested effective date. Requests for price adjustments 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 pricing will be allowed prior to the effective date unless the pricing is decreased.

6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

6.1.4 No retroactive adjustments to prices or rates will be allowed.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

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

VII. Ordering

7.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

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

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

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

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

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

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement’s terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed

after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;
- 7.6.5** Pricing consistent with this Master Agreement or as adjusted by agreement of the Purchasing Entity and Contractor (i.e. volume discount, state-specific administrative fee, etc.);
- 7.6.6** A not-to-exceed total for the products or services being ordered; and
- 7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

7.7 Communication. All communications concerning administration of Orders placed must 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.

7.8 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.

VIII. Shipping and Delivery

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

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

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

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

becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

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

IX. Inspection and Acceptance

9.1 **Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

9.2 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

9.3 **Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

9.5 **Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

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

X. Warranty

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

XI. Product Title

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

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

XII. Indemnification

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

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

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

12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;

12.2.1.2 specified by the Contractor to work with the Product;

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

12.2.1.4 reasonably expected to be used in combination with the Product.

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property

Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

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

13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

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

13.3.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

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

13.5 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 **Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

13.7 **Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage

may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

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

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

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

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

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

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

14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

- 14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
- 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
- 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately

compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

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

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

14.3 Assignment/Subcontracts

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

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

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

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

14.6 Cancellation. Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in

whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

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

14.8 Defaults and Remedies

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

14.8.1.1 Nonperformance of contractual requirements;

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

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

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

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

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

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

14.8.3.1 Any remedy provided by law;

14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;

- 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.8.3.5** Suspension of Contractor's performance; and
 - 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9** **Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.
- 14.10** **Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

- 14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- 14.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not

limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

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

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

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

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

14.14 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

SIGNATURE PAGE
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

CONTRACTOR

GH Armor Systems Inc.

Signed by:

Chris Grado

B271019BBEBE448...

By: Chris Grado, General Manager

Date: 5/7/2025

STATE OF COLORADO

Jared S. Polis, Governor

**Department of Personnel and Administration,
State Purchasing and Contracts Office**

Tony Gherardini, Executive Director

DocuSigned by:

John Chapman

EF45AFDEB51E414...

By: John Chapman State Purchasing Manager

Date: 5/7/2025

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

DocuSigned by:

Nathan Manley

66856696CC1A43A...

Nathan Manley

Effective Date: 5/8/2025

In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated above by the State Controller or an authorized delegate.

Exhibit A Scope of Work

I. Master Agreement Deliverables

1.1 Body Armor Products must meet the NIJ, ASTM, and/or any additional product standards as requested by the Lead State for the price list. As new standards are published, Contractor may or may not have transition dates provided to add new products to the Master Agreement. As products are no longer maintained on the NIJ CPL or ASTM Verified Products List, the Lead State will remove them from Contractor's Price List, if not removed by Contractor. If new verification and/or certification programs are completed by NIJ, ASTM, or other recognized conformity assessment body, the Lead State may request new products from Contractor. When new or revised standards are available, Contractor will be expected to submit products compliant with the new or revised standards during the term of the Master Agreement. If new standards are published in the last few months of the last term of the Master Agreements Contractor will not be required to submit new products compliant with new or revised standards. Contractor will not be required to provide all product types.

1.2 Product Standards

- NIJ Standard 0101.06, Ballistic Resistance of Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ 0101.07, Ballistic Resistance of Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- NIJ Standard 0115.00, Stab Resistance of Personal Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ Standard 0115.01, Stab Resistance of Personal Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- ASTM E3368/E3368M, Standard Specification for Ballistic-Resistant Helmets Worn by U.S. Public Safety Officers also to include ballistic resistant face shields when on Verified Products List. Helmets not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- ASTM E3347/E3347M Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers. Shields not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- New or revised product standards for body armor and ballistic-resistant products. Products compliant with new or revised product standards may be added to price lists if requested and approved by the Lead State. Requested additions to price list may or may not be approved in a timely manner.

1.3 Product Category

- **Ballistic-resistant Vest:** NIJ Standard 0101.07 Protection Levels HG1, HG2, RF1, RF2, RF3. NIJ Standard 0101.06 Products will be accepted on the price lists until the NIJ CPL for 0101.06 is no longer online. When it is no longer maintained by NIJ these products will not be acceptable on the Master Agreements.

- **Stab-resistant Vest:** NIJ Standard 0115.00 or 0115.01 Spike or Edged Blade Protection Levels 1, 2, and 3. Vest models shall be listed on the NIJ Stab Armor CPL. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **Combination Vest:** Ballistic and Spike and/or Edged Blade: All vests offered as combination vests shall be listed on both the NIJ Ballistic Armor CPL and the NIJ Stab Armor CPL. The ballistic panel shall have the NIJ mark on the label. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **In Conjunction With Armor:** NIJ -0101.07 Protection Levels HG1, HG2, RF1, RF2, RF3. The ballistic panels shall have the NIJ mark on the label.
- **K-9 Ballistic-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified
- **K-9 Combination Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **K-9 Stab-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **Ballistic-resistant Helmets:** ASTM Standard Specification for Ballistic Resistant-Resistant Helmets Worn by U.S. Public Safety Officers ASTM E3368/E3368M. To include ballistic resistant face shields as well when listed on the Verified Products List. Models shall be listed on the ASTM Verified Products List.
- **Ballistic-resistant Shields:** ASTM Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers E3347/E3347M. Models shall be listed on the ASTM Verified Products List.
- **Carriers:** Carriers are an integral part of a vest (providing no ballistic protection), and some types of carriers are: Concealable, uniform shirt, and tactical.

1.4 **Accessories:** includes but is not limited to the following items:

- **Ballistic-resistant:** As of the date of the posting of this RFP, NIJ, ASTM or other group does not certify or verify ballistic-resistant accessories. During the term of this Master Agreement, when certification or verification programs are implemented for any of these categories, including shoulder, neck, groin, and other ballistic-resistant accessories, Contractor will be expected to provide new products in these verification or certification programs. Transition dates may or may not be provided for adding new items to price lists.
- **Groin, yoke, bicep, collar, shoulder, and throat protectors:** To be added to Market Basket list after verification or certification programs are implemented.
- **Non-ballistic-resistant Products**
- **Trauma pack:** Located on Non-Market Basket list with products that are not verified or certified.
- **Trauma plate:** Located on Non-Market Basket list with products that are not verified or certified.
- **Insert (soft armor or hard armor)** Located on Non-Market Basket list with products that are not verified or certified.
- **Pouches:** Located on Non-Market Basket list with products that are not verified or certified.
- **Replacement carrier straps:** Located on Non-Market Basket list with products that are not verified or certified.

- **ID Patches:** Located on Non-Market Basket list with products that are not verified or certified.
- **Carry bags for concealable vest, tactical vest, shield, and helmet:** Located on Non-Market Basket list with products that are not verified or certified.
- **Helmet equipment rails, pads, and retention/suspension system:** Located on Non-Market Basket list with products that are not verified or certified.
- **Shield lights, shoulder straps, logos:** Located on Non-Market Basket list with products that are not verified or certified.

II. Product Specifications

Body Armor and Ballistic-Resistant Products must be ordered new and unused, and shall not contain re-used/remanufactured or re-purposed components.

Body Armor and Ballistic-resistant Products that are listed on NIJ-CPL, ASTM-Verified Products List, or other verification or certification program, shall be constructed identically to the original model tested and certified or verified to comply with the NIJ or ASTM Standards referenced in this solicitation or provided by ASTM, NIJ or other body as approved by the Lead State. For body armor and ballistic-resistant products not certified by NIJ or verified by ASTM, the Contractor shall specify the standard(s) and threats against which the product was tested, shall provide attestation of compliance with the standard(s), and shall provide (upon request of the Lead State or Purchasing Entity) the test report.

All materials and construction shall be of the same as reported to NIJ in the “Build Sheet” or in the “submittal package” which lists the materials and construction for the model for NIJ certified products. All materials and construction shall be the same as in the ASTM-required build sheet or submittal package for ASTM verified products.

Workmanship shall be first quality, with no defects that might affect performance, wearability, or durability of the vest.

Products intended to be worn by end users shall not be “bulk ordered” inventory, nor substantially tailored or modified “off the shelf” items. Items worn by end users are to fit personnel as needed, since altering products could potentially change the performance aspects originally tested under NIJ Compliance Testing Program or ASTM Verification Process.

Each product intended to be worn by end users shall be made to professionally conducted measurements intended to fit a specific individual. Under no circumstances shall measurements result in a product that does not properly fit and/or provide adequate protective coverage for that individual.

All vest measurements must be made according to Contractor procedures and take into account all clearances of panels and duty belts as described in the most recent version of ASTM E3003, Standard Practice for Measurement of Body Armor Wearers and Fitting of Armor.

Available sizes for soft armor vests (handgun protection) shall be consistent with the NIJ Compliance Testing Program requirements for the size range listed on the NIJ CPL.

All Body Armor Products that include the option of additional trauma packs, trauma plates, or inserts shall have the pocket/holder securely attached to keep the inserts in position while worn.

All fasteners, including hook and pile (Velcro), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

The label shall withstand normal wear and cleaning and shall remain legible and attached throughout the entire warranted life of the product. All Body Armor shall be labeled with strict adherence to any applicable laws and regulations and follow the appropriate labeling requirements according to NIJ Standards for body armor or ASTM Verification Mark standards for ballistic-resistant products other than body armor, as updated or amended. This shall include at least the following for applicable products:

- a)** Name of Contractor.
- b)** Location of Contractor.
- c)** Model designation from the relevant NIJ CPL or ASTM Verified Products List (The model designation number shall match the submitted price list and letter of certification/verification.)
- d)** ASTM Verification Mark and name of the standard to which the product is verified
- e)** NIJ Mark and identifier for the relevant NIJ Standard, such as NIJ Standard- 0101.06, NIJ Standard-0101.07 or NIJ Standard-0115.00 or NIJ Standard- 0115.01 (Combination armor shall indicate both).
- f)** Completed manufacturing date
- g)** Lot number.
- h)** Unique serial number.
- i)** Brand name and catalog number.
- j)** A “Property of” space so Purchasing Entity can enter an agency or officer name.
- k)** An “Asset Number” space so Purchasing Entity can enter as needed.
- l)** Basic care and maintenance instructions.
- m)** For body armor and shields, basic care and maintenance instructions.
- n)** Size of product.
- o)** Ballistic protection warranty period.

Contractor, agent, and/or distributor must have the serial numbers stored in a readily accessible database.

Ballistic-resistant components must have at least a 5-year Contractor's warranty.

All carriers must have at least an 18-month Contractor's warranty.

Warranty periods specified shall begin when Body Armor Products are delivered and accepted following inspection by Purchasing Entity.

All fasteners, including hook and pile (Velcro®), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

III. Contractor Responsibilities and Tasks

3.1 Customer Service

Contractor shall provide a single point of contact for all issues and questions regarding the goods and services provided, including, but not limited to: pricing, product issues, delivery, status of orders, and Contract issues.

Contractor must provide full service and support for awarded products during normal business hours.

Distributors must be able to service Purchasing Entities within a reasonable time frame, and must have the ability to travel to the Purchasing Entity's specified location once an order, regardless of quantity, has been received.

Distributors shall offer instruction or provide presentations, as requested by Purchasing Entities, regarding the care, usage, and limitation of bullet-resistant and stab-resistant armor.

3.2 Ordering and Invoicing Specifications

All items subject to NIJ compliance testing must be listed on the NIJ CPL with a model status of "active" on the date the Order is placed. Items not subject to NIJ compliance testing or ASTM Verification shall have evidence of compliance with an appropriate standard.

Contractor may not provide Body Armor and Ballistic Resistant Products that have not been approved by the Lead State.

The price list shall be ceiling pricing. Contractor may offer lower pricing on a per Order basis to Purchasing Entities; likewise, Purchasing Entities may request lower pricing on a per Order basis only from Contractor.

All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Contractor shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated. Contractor is not permitted to send Price List updates directly to NASPO ValuePoint.

All requested changes to price lists, additional products requested to be added, products removed, price modifications or other changes will be provided to the Lead State for approval and will be provided with colored text, or strike through colored text. If price list changes are not clear they may be requested to be modified for clarification.

Pricing must include all shipping, delivery and service costs associated with the product.

All sizing, measurements, and final fitting shall be done at no expense to, and shall be scheduled at the convenience of, the Purchasing Entity.

All orders, regardless of quantity, shall be delivered to Purchasing Entities within sixty (60) calendar days after Manufacturer receipt of order.

The Contractor must coordinate delivery with the Purchasing Entity specified on the order.

Body Armor improperly fitted to an individual wearer shall be altered or replaced and delivered to the individual within thirty (30) calendar days by the Contractor at no expense to the Purchasing Entity.

Product invoice shall contain, at a minimum:

- a)** Name of Purchasing Entity.
- b)** Order date.
- c)** Description of the product ordered.
- d)** NIJ CPL model designation and Threat Level.

- e) Serial number.
- f) Price.
- g) Any additional information required by the Purchasing Entity.

3.3 Packaging Requirements

All Body Armor and Ballistic-resistant products shall be packaged in such a manner as to ensure delivery in undamaged condition.

All packages must be labeled to indicate, at minimum, the Contractor's name and order number and the Purchasing Entity's name, address, and contact person.

Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.

3.4 Delivery Requirements

All deliveries must be FOB Destination; freight prepaid by the Contractor, to the Purchasing Entity's specified location. Responsibility and liability for loss or damage for all orders will remain with the Contractor until final inspection and acceptance, when responsibility will pass to the Purchasing Entity, except the responsibility for latent defects, fraud, and the warranty obligations.

All deliveries shall be made during normal working hours, which may vary for each Purchasing Entity of each Participating State.

It shall be the responsibility of the Contractor to be aware of the delivery days and receiving hours for each Purchasing Entity.

The Purchasing Entity shall not be responsible for any additional charges, should the Contractor fail to observe specific delivery days and receiving hours.

The delivery days and delivery hours shall be established after contract award by each individual Purchasing Entity.

3.5 Recycling

Contractors are encouraged to facilitate recycling of used ballistic panels and other products on behalf of Purchasing Entities. Details listed in Exhibit E.

Recycling programs may be operated in-house by the Contractor, or through contractual or other arrangements which the Contractor shall establish with reputable domestic firms who have an established history of recycling ballistic materials and other products and providing chain of custody documentation.

Expired, unsafe and aged ballistic vests and other personal protection gear are transported to a processor where the material is processed and rendered unusable in ballistic protection applications. After the deconstruction of ballistic panels and/or other technical materials, the fiber is converted into end-use items such as gloves, brake pads, boat ropes, tire treads, etc. This will aid in keeping sensitive ballistic material out of circulation.

Recycled ballistic panels shall be tracked by serial number throughout the recycling process.

IV. Lead State Responsibilities and Tasks

4.1 Product and Distributor List Revisions

As new products are made available; Contractor may submit these products for consideration by the Lead State. Only products that are new item numbers (i.e., having different materials, styles and/or construction) will be considered. Contractor may submit new products once per quarter by the 1st day of the quarter, and final approval of new products is at the discretion of the Lead State. New approved products will be listed on the website after approval by the Lead State. For new products submitted after the first of the month, having errors in the submission or errors in the items, or requested changes from the Contractor after initial approval, may have delays in approval for addition to the Master Agreement.

New products receiving Certification or Verification to the NIJ CPL or the ASTM Verified Products List may be added to the price list at the currently existing MSRP/List Price Discount Percentages in between quarters if requested by Contractor and at the discretion and approval of the Lead State.

Contractor shall notify the Lead State when products previously approved are suspended or removed from the NIJ CPL (e.g., NIJ Safety Notice or NIJ Advisory Notice issued) or removed from the ASTM Verified Products List.

Distributor lists to be provided to the Lead State when changes are requested by Contractor. Agent/Distributor form to be provided with all update requests.

After the first (12) months of the contract, the MRSP/List Price Discount Percentages will be used as one part of a guideline for price change reviews; other parts of the guideline include, but are not limited to, the overall increase from the current contract BID Price.

Exhibit B – Product and Price List

Go to NASPO ValuePoint Master Agreement web page for current Lead State and Contractor Approved Product and Price List.

Exhibit C – Agents and Distributors by State

Go to NASPO ValuePoint Master Agreement web page for current Lead State and Contractor Approved Agents and Distributors by State list.

Exhibit D – Authorized Distributor Form

To be completed and returned to the Lead State for review and approval at the Lead State's discretion with any Distributor List Update requests.

Manufacturer/Contractor Name

Master Agreement Number

(Check one)

The Agent/Distributor listed below is an authorized reseller and will provide Goods and Services in accordance with the State of Colorado and NASPO ValuePoint Request for Proposal and Master Agreement.

The Agent/Distributor listed below will no longer provide Goods and Services under the NASPO ValuePoint Body Armor and Ballistic Resistant Products Master Agreement.

Agent / Distributor Company Name

State(s) Serviced by Agent/Distributor

Date(s) Training Completed (for new Distributors)

State(s) Serviced by Agent/Distributor

Agent/Distributor Name

Address:

Phone (include Toll-Free, if available)

Contact Person(s)

Email Address(es)

FEIN

Agent/Distributor Website (If available)

Signed: _____ **Date:** _____
(Master Agreement Contractor)

Signed: _____ **Date:** _____
(Distributor Representative)

Exhibit E – Warranty and Recycling Plan

RECYCLING PROGRAM

GH Armor has partnered with Davy Textiles of Statesville, North Carolina, to provide agencies a method of disposal for used soft armor panels with a documented chain of custody and certificate of destruction. Disposal is free of charge and the agency is responsible only for freight charges to the disposal location for quantities of 250 panel sets or less. The soft armor panels will be destroyed and recycled for use in non-ballistic commercial products and a certificate of destruction with serial number tracking will be provided to the agency.

To participate in the recycling program:

- Submit a request for destruction via email to customerservice@gharmor.com.
- A form will be provided for additional details; return completed form to Customer Service.
- Disposal of soft armor panels is free of charge.
- Agency is responsible for freight for requests of less than 250 soft armor panel sets.
- GH shall provide pickup free of charge for requests of more than 250 soft armor panel sets.
- Within four weeks, Davy Textiles will provide the agency with confirmation of receipt and certificate of destruction, including serial number tracking, dependent on provision of serial numbers by the requesting agency.

Note: GH Armor is not affiliated with Davy Textiles or liable for any services provided by non-affiliated entities. Please contact Davy Textiles with any concerns before, during, or after processing to ensure satisfaction with the provided service.

Davy Textiles Inc

Address: 116 Wooten St Statesville NC 28677 PH 704-978-1099

IN-HOUSE CHAIN OF CUSTODY POLICY

Policy: Davy Textiles, Inc shall keep sufficient records of all movement and disposal of materials through the recycling process.

Purpose: To ensure proper handling of product information and ensure product traceability.

Scope: This procedure applies to all materials requiring a certificate of destruction.

DISPOSAL REQUEST FORM

Obtain the form from GH Armor customer service: customerservice@gharmor.com.

WARRANTY

SOFT ARMOR PANEL WARRANTY

For a period of 5 years after the date of issue (which may be up to 1 year from the date of manufacture), GH Armor warrants that its soft armor panels shall be free from defects in material and workmanship. Soft armor panels should not be worn or used after the expiration of this warranty period. The above warranty does not apply to any soft armor panels that have been subjected to misuse, abuse, accident, neglect, unauthorized alteration, breakage, interruption, damage, improper storage or handling, or unauthorized repair or service.

CARRIER WARRANTY

For a period of 1 year after the date of issue (which may be up to 1 year from the date of manufacture), GH Armor warrants that its carriers shall be free from defects in material and workmanship. The above warranty does not apply to any carriers that have been subjected to misuse, abuse, accident, neglect, unauthorized alteration, breakage, interruption, damage, improper storage or handling, or unauthorized repair or service.

HARD ARMOR WARRANTY

For models with specifications indicating a 5 year warranty, for a period of 5 years after the date of issue (which may be up to 1 year from the date of shipment), GH Armor warrants that its hard armor plates shall be free from defects in material and workmanship. Hard armor should not be worn or used after the expiration of this warranty period. The above warranty does not apply to any hard armor plates that have been subjected to misuse, abuse, accident, neglect, unauthorized alteration, breakage, interruption, damage, improper storage or handling, or unauthorized repair or service.

For models with specifications indicating a 10 year warranty, for a period of 10 years after the date of issue (which may be up to 1 year from the date of shipment), GH Armor warrants that its hard armor plates shall be free from defects in material and workmanship. Hard armor should not be worn or used after the expiration of this warranty period. The above warranty does not apply to any hard armor plates that have been subjected to misuse, abuse, accident, neglect, unauthorized alteration, breakage, interruption, damage, improper storage or handling, or unauthorized repair or service.

USE OF SOFT ARMOR PANELS IN THIRD-PARTY EXTERNAL CARRIERS

Consistent with the terms of the Soft Armor Panel Warranty, GH Armor will continue to support the warranty of GH Armor soft armor panels when used in conjunction with approved third-party external carriers, subject to the following conditions:

- GH Armor soft armor panels shall remain in their original GH concealable carrier when inserted into the third-party external carrier.
- The front and rear soft armor panels shall be fastened together with the hook and loop straps and connected inside of the shoulder area of the third-party external carrier in order to suspend the front and back soft armor panels in the proper orientation.
- GH Armor soft armor panels shall not be used with third-party concealable carriers.

Proper orientation is integral to the performance of the soft armor panels. Additionally, soft armor panels offer protection to only those areas that cover the body. As such, GH Armor will not be responsible for the sizing, labeling or integration of the soft armor panels with third-party external carriers.

Any use of GH Armor soft armor panels that does not reflect the intended fit, placement, or orientation of the soft armor panels or in any way degrades the performance, protection, or durability of the soft armor panels shall void the warranty.

GH Armor will not support the warranty of GH Armor soft armor panels when used in conjunction with non-approved third-party external carriers.

SUPPLEMENTAL GUIDANCE

GH Armor affirms that its NIJ 06 products, specifically soft armor panels certified to comply with the National Institute of Justice's ("NIJ") Ballistic Resistance of Body Armor, NIJ Standard-0101.06, for the applicable NIJ threat level designated on each soft armor panel label. For spike and/or multi-threat (i.e., ballistic and stab

resistant) soft armor panels, GH Armor also affirms that the products have been certified to comply with the NIJ's Stab Resistance of Personal Body Armor, NIJ Standard-0115.00, for the applicable NIJ spike threat level designated on each soft armor panel label.

Vests shall be always worn in accordance with GH Armor Use & Care guidelines. The above warranties do not apply to any product subjected to misuse, abuse, accident, neglect, unauthorized alteration, breakage, interruption, damage, improper storage or handling, or unauthorized repair or service. The above warranties are the sole and exclusive warranties made by GH Armor with respect to its products, not be enlarged by any representations, descriptions, course of dealing, trade usage, technical advice, service, samples, models, or otherwise, nor shall they be altered or expanded by any acts, statements, or agreements of any dealer, employee, or agent of GH Armor (other than by an authorized officer of GH Armor).

In no event shall GH Armor be liable for any punitive, exemplary, or consequential damages, anticipated or lost profits, incidental damages, loss of time, or other indirect losses or expenses that may arise from any cause relating to its products, regardless of the form of the action, notwithstanding any contrary provision. In no event shall the total liability of GH Armor (together with the liability of its officers, directors, employees, and agents) exceed the purchase price actually paid for the product that gives rise to such liability. The foregoing disclaimers are subject to any applicable laws that regulate product warranties.

PRODUCT USE & CARE

Adhere to the additional attachment on the NASPO Master Agreement for these details.

VEST ASSEMBLY

Locate "BODY SIDE" label on front soft armor panel. Insert front soft armor panel in proper orientation with "BODY SIDE" label facing toward body. Repeat steps for rear soft armor panel. Engage internal shoulder suspension tabs to secure soft armor panels to carrier. Close carrier. Don vest and adjust straps for proper fit and coverage, ensuring balanced front-to-rear overlap.

Significant adjustability may be achieved through strap placement. Prior to duty wear, adjust straps for proper fit and coverage. Contact distributor immediately with questions or concerns.

Routinely inspect vest for signs of degradation. If evidence of soft armor panel, panel cover, or seam seal damage is found, contact distributor immediately for repair or replacement.

VEST ASSEMBLY & STORAGE

VEST STORAGE

Store vest in cool, dry location. Do not store vest with prolonged exposure to excessive heat and/or humidity, which may adversely affect vest performance.

Store vest on flat surface or in orientation avoiding excessive stress on carrier components, including elastic and/or hook and loop. Do not hang vest by elastic straps for extended period. Do not store vest in compressed, folded, or improper configuration.

VEST ASSEMBLY

Locate "BODY SIDE" label on front soft armor panel. Insert front soft armor panel in proper orientation with "BODY SIDE" label facing toward body. Repeat steps for rear soft armor panel. Engage internal shoulder suspension tabs to secure soft armor panels to carrier. Close carrier. Don vest and adjust straps for proper fit and coverage, ensuring balanced front-to-rear overlap.

Significant adjustability may be achieved through strap placement. Prior to duty wear, adjust straps for proper fit and coverage. Contact distributor immediately with questions or concerns.

Routinely inspect vest for signs of degradation. If evidence of soft armor panel, panel cover, or seam seal damage is found, contact distributor immediately for repair or replacement.

VEST STORAGE

Store vest in cool, dry location. Do not store vest with prolonged exposure to excessive heat and/or humidity, which may adversely affect vest performance.

Store vest on flat surface or in orientation avoiding excessive stress on carrier components, including elastic and/or hook and loop. Do not hang vest by elastic straps for extended period. Do not store vest in compressed, folded, or improper configuration.

REQUEST FOR PROPOSALS for BODY ARMOR AND BALLISTIC RESISTANT PRODUCTS

Issued by the
STATE OF COLORADO



In collaboration with



SOLICITATION NUMBER: RFP-SPCO-AR-25-03

RFP WEBSITE: <http://colorado.gov/vss>

**Request for Proposals for
Body Armor and Ballistic Resistant Products**

Issued by the **State of Colorado**
Solicitation Number RFP-SPCO-AR-25-03



SPCO

State Purchasing & Contracts Office

RFP OVERVIEW

I. INTRODUCTION

This Request for Proposals (RFP) is being issued by the State of Colorado (“Lead State”) in collaboration with the NASPO ValuePoint cooperative purchasing program. The purpose of this RFP is to establish one or more Master Agreements for **Body Armor and Ballistic Resistant Products** with qualified suppliers.

Offerors should be able to provide new ballistic-resistant vests, spike- and edged-blade-resistant vests, ballistic-resistant helmets, ballistic-resistant shields, and associated products that meet the following requirements as established by the National Institute of Justice (NIJ) and ASTM:

- NIJ Standard 0101.06, *Ballistic Resistance of Body Armor*
- NIJ Standard 0101.07, *Ballistic Resistance of Body Armor*
- NIJ Standard 0115.00, *Stab Resistance of Personal Body Armor*
- NIJ Standard 0115.01, *Stab Resistance of Personal Body Armor*
- ASTM E3347/E3347M, *Ballistic Resistant Shields*
- ASTM E3368/E3368M, *Ballistic Resistant Helmets*
- Other relevant standards for Body Armor and Ballistic Resistant Products

Products for which there exists an NIJ Compliant Products List (NIJ CPL) shall be listed on the appropriate NIJ CPL. Products for which there exists an ASTM Verified Products List shall be listed on the appropriate ASTM Verified Products List.

The objective of this RFP is to obtain the 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.

About NASPO ValuePoint

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

Participation in NASPO ValuePoint Master Agreements is convenient and cost-effective for eligible entities—including state departments, institutions, agencies, political subdivisions, federally recognized tribes, and other eligible public and nonprofit entities in the 50 states, the District of Columbia, and U.S. territories—and suppliers, with no membership or registration required. In 2023, contractors reported a combined **\$20.48 billion** in sales through NASPO ValuePoint Master Agreements awarded through cooperative solicitations like this RFP, including a combined **\$70.25 million** in sales through the current Body Armor and Ballistic Resistant Products portfolio.

More information about NASPO, NASPO ValuePoint, and the NASPO ValuePoint Lead State Model can be found at www.naspo.org and www.naspovaluelpoint.org and in Attachment E – Participation Information.

**Request for Proposals for
Body Armor and Ballistic Resistant Products**

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II. GENERAL INFORMATION AND INSTRUCTIONS

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

Amy Risley
State Procurement Administrator
State of Colorado
amy.risley@state.co.us
303-866-5663

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

<http://colorado.gov/vss>

Click “View Published Solicitations” and choose “Open” under the *Show Me* dropdown. Then search “*BODY ARMOR*” or “*2025000008*” in the *Keyword Search* box. After clicking on the hyperlinked solicitation number, click on the “Attachments” tab to access the RFP files.

Proposal Submission. Send an email to RFP_SPC.h158ekv4bex7k3l3@u.box.com, attaching the proposal as a zip folder. Proposals sent by other methods will not be accepted.

IMPORTANT: The Zip Folder must be titled with the RFP Number, RFP Title, and the Offeror's name, such as below:

RFP-SPCO-AR-25-03 – Body Armor and Ballistic Resistant Products – Company Name

Please note the following:

1. The subject line and body of the email are not uploaded into the online submission application; only email attachments are. Should any Offeror wish to ask a question or make a comment regarding the solicitation, Offerors should send a separate email to amy.risley@state.co.us.
2. Offerors should submit one zip folder that contains all required proposal submission documents. The zip folder name should include the following title: **RFP- SPCO-AR-25-03, Body Armor and Ballistic Resistant Products** and also include the Offeror's name.
3. The solicitation submission application typically uploads proposals within five minutes. Offerors are advised to submit proposals no later than one hour prior to the solicitation deadline to ensure the proposal has been received.
4. Please make certain that your email program will allow zip folders of the size your proposal response is being submitted to be sent from your email address.
5. The application sends an email confirmation if the proposal was uploaded correctly.
6. Please do not encrypt your email. The e-submission program automatically encrypts attachments and any additional encryption may result in failure to upload the proposal.
7. The solicitation submission application is only for proposal submission. All inquiries, questions, comments, or concerns should be submitted to the procurement contact via email and not through the solicitation submission application.

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

1. Attachment A – RFP Terms and Conditions
2. Attachment B – Scope of Work

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Body Armor and Ballistic Resistant Products**

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3. Attachment C – RFP Evaluation Plan
4. Attachment D – Sample Master Agreement
5. Attachment E – Participation Information
6. Attachment F – Protest Information
7. Attachment G – Offeror Information, Acknowledgements, and Certifications
8. Attachment H – Offeror Response Worksheet
9. Attachment I – Cost Proposal
10. Attachment J – Proposed Modifications to Sample Master Agreement
11. Attachment K – Claim of Business Confidentiality
12. Attachment L – Agents and Distributors by State

D. Important Dates.

1. **RFP Post Date:** September 26, 2024
2. **RFP Q&A Questions Deadline:** October 09, 2024 @ 03:00 pm MDT
3. **RFP Close Date:** November 05, 2024 @ 02:00 pm MST
4. **Public Opening:** November 05, 2024 @ 02:30 pm MST

If Offeror wishes to attend the virtual Public Opening, Offeror shall reach out to the RFP Contact in Section II.A.

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

E. How to Ask Questions.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. For questions about the content of this RFP, send your questions via email to the RFP Contact. Questions must reference the specific section of the RFP to which the question relates.
3. Distributors and/or Agents must direct all questions through the Offeror.
4. Please limit inquiries to only those questions that are essential in order to submit a viable proposal in response to this RFP. Requests for detailed or exhaustive information may be declined if said information is not deemed by the Lead State to be necessary in order to submit a viable proposal.
5. Response to supplier questions will be published as a modification on VSS. Suppliers should not rely on any other information if it is not published on VSS, either written or oral, that alter any specification or other term or condition of the RFP during the open solicitation period. Suppliers are NOT to contact any other state office or individual regarding this solicitation, as doing so may result in the supplier being disqualified.
6. The identity of potential suppliers will not be published with the answers, but the text of questions may be restated, so suppliers are cautioned about including context in questions that may reveal the source of questions.
7. For assistance with technical issues associated with the RFP Website, contact the ColoradoVSS Help Desk, available Monday through Friday from 8:00 a.m. to 5:00 p.m. MT (excluding State holidays) by email: VSSHelp@state.co.us.

F. How to Respond.

1. **Read and review this RFP, including all attachments, exhibits, and amendments.**
2. Prepare a proposal that:
 - a. Follows the requested format;
 - b. Includes the Solicitation Number on all materials making up the proposal;

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- c. Addresses each question and request for a response in this RFP, including all questions in Attachment H – Offeror Response Worksheet;
- d. Clearly demonstrates your ability to meet the Scope of Work described in Section III and Attachment B; and
- e. Includes all required submissions identified in Section IV.A.

3. Submit your proposal as described in Section II.B by the RFP Close Date.

III. SCOPE OF WORK

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

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

The initial term of the Master Agreement(s) resulting from this RFP is anticipated to be two (2) years, with the option to exercise renewals totaling up to an additional three (3) years following the initial term, upon mutual agreement by the Lead State and Contractor.

IV. OFFEROR RESPONSE

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

1. Any response must be submitted directly through an online submission application. To use this application, please send an email to RFP_SPC.h158ekv4bex7k3I3@u.box.com, attaching the proposal response as a zip folder.
2. Completed and signed Attachment G – Offeror Information, Acknowledgements, and Certifications
3. Completed Attachment H – Offeror Response Worksheet
4. Completed Attachment I – Cost Proposal, submitted as a separate document and separate file, in electronic submission
5. Completed Attachment J – Proposed Modifications to Sample Master Agreement
6. Redlined copy of Attachment D – Sample Master Agreement, if proposing modifications
7. Completed and signed Attachment K – Claim of Business Confidentiality
8. Redacted copy of proposal clearly marked as such, if claiming confidential, proprietary, or protected information
9. Completed Attachment L – Agents and Distributors by State

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

1. This RFP Overview
2. Attachment A – RFP Terms and Conditions
3. Attachment B – Scope of Work
4. Attachment C – RFP Evaluation Plan
5. Attachment D – Sample Master Agreement
6. Attachment E – Participation Information
7. Attachment F – Protest Information

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V. EVALUATION AND AWARD PROCESS

- A. A comprehensive, thorough, complete, and impartial evaluation of each proposal received will be conducted in accordance with §24-103-203(7), C.R.S, which states, "The award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and evaluation factors set forth in the request for proposal."
- B. Proposals will be sealed until the Public Opening. After opening, proposals will be evaluated in stages as set forth in this section and further detailed in Attachment C – RFP Evaluation Plan.
 1. **Stage 1: Initial Responsiveness Evaluation.** Proposals will be reviewed for completeness, initial responsiveness, and compliance with all mandatory requirements. Proposals omitting required documents or responses or failing to meet all Mandatory Requirements may be rejected in accordance with Attachment A – RFP Terms and Conditions.
 2. **Stage 2: Technical Criteria Evaluation.** Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the Technical Criteria set forth in Attachment C – RFP Evaluation Plan. The Lead State and Multistate Sourcing Team will then determine which proposals will proceed to Stage 3: Cost Evaluation. Methods used to make this determination may include, but are not limited to, one or more of the following:
 - Identification of a natural break in total scores
 - Consideration of the optimal number of Contractors required to successfully supply Deliverables to Participating Entities and Purchasing Entities
 3. **Stage 3: Cost Evaluation.** Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated based on MSRP/List Price Discount Percentages. Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.
 4. Scores from the technical criteria and cost evaluations will be combined, as set forth in Attachment C – RFP Evaluation Plan, to get a final score for each category type.
- C. The Lead State and Multistate Sourcing Team will then determine which proposals are most advantageous to the Lead State and potential Participating Entities and Purchasing Entities. Methods used to make this determination may include, but are not limited to, one or more of the following:
 - Identification of a natural break in total scores
 - Consideration of the optimal number of Contractors required to successfully supply Deliverables to Participating Entities and Purchasing Entities
- D. Prior to announcement of awards and execution of Master Agreements, the Lead State will present an award recommendation to NASPO ValuePoint for approval of the proposed awards.
- E. Following approval of NASPO ValuePoint and the approvals required by the Lead State, a public Notice of Intent to Award will be published on Colorado VSS.

Negotiations with successful Offerors will begin after the conclusion of the Protest Period.

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Attachment A

RFP TERMS AND CONDITIONS

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

I. DEFINITIONS

- A. Award or award** means the identification of Offeror(s) eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation.
- B. Confidential Information** means any and all information in any form that is marked as confidential or would by its nature be deemed confidential and is obtained by Offeror in connection with this RFP, including but not limited to the data or records of the Lead State, the Multistate Sourcing Team, NASPO, or NASPO ValuePoint.
- C. Contractor** means an Offeror with whom the Lead State executes a Master Agreement resulting from this RFP.
- D. Day** means a calendar day, unless otherwise indicated.
- E. Deliverable** means a good, product, service, solution, result, labor, or other effort being sought through this RFP.
- F. Interested State** means a state that has requested to be identified as a potential Participating Entity in this RFP.
- G. Lead State** means the State issuing this RFP and who centrally administers any resulting Master Agreement(s).
- H. Master Agreement** means a contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint.
- I. Multistate Sourcing Team** means the group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of proposals, negotiation of Master Agreements, and evaluation of Contractor performance.
- J. NASPO** means the National Association of State Procurement Officials.
- K. NASPO ValuePoint** means the cooperative contracting division of NASPO.
- L. Offeror** means an entity or individual submitting a proposal in response to this RFP.
- M. Order** means a purchase order, sales order, agreement, or other document used by a Purchasing Entity to commit funds in exchange for a Contractor's delivery of one or more Deliverables.
- N. Participating Addendum** means a contract, referencing a Master Agreement, that is executed by and between a Contractor and a Participating Entity and may include Participating Entity-specific requirements and terms.
- O. Participating Entity** means a state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Contractor.
- P. Proposal or proposal** means the document(s), data, information, and other media submitted by an Offeror in response to this RFP, including information submitted directly through the Proposal Submission (as identified in Section II.B. of the RFP Overview) and information submitted after the RFP Close Date at the request of the Lead State.
- Q. Public Opening** means the date and time identified in Section II.D.4 of the RFP Overview.
- R. Purchasing Entity** means a state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum.
- S. RFP** means this request for proposals, including all attachments and exhibits and any information posted by the Lead State to the RFP Website, as amended.
- T. RFP Close Date** means the date and time identified in Section II.D.3 of the RFP Overview.

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- U. RFP Contact** means the individual identified in Section II.A of the RFP Overview.
- V. RFP Post Date** means the date and time identified in Section II.D.1 of the RFP Overview.
- W. RFP Q&A Deadline** means the date and time identified in Section II.D.2 of the RFP Overview.
- X. RFP Website** means the website identified in Section II.B of the RFP Overview.
- Y. Solicitation Number** means the number identified on the cover page of the RFP Overview and in the header of each attachment to this RFP.

II. GOVERNING LAW AND VENUE

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

III. RFP DOCUMENTS

A. RFP Website.

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

B. RFP Amendments.

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

C. Waiver.

- 1. The Lead State may waive any requirement in this RFP if the Lead State determines that waiver is in the best interest of the Lead State and potential Participating Entities and Purchasing Entities.

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- 2. Waiver of a requirement will not be construed as waiver of any other requirement in this RFP.
- 3. The Lead State may waive minor irregularities or defects in an Offeror's proposal.

D. Conflicts and Issues.

Any RFP conflicts or issues should be brought to the attention of the Lead State using the process described in this RFP for asking questions or, if applicable, by filing a protest using the process described in Attachment F – Protest Information.

IV. PROPOSALS

- A. Late Delivery or Non-delivery of Proposal.** Offeror is wholly responsible for ensuring Offeror's proposal is complete and submitted timely to the Lead State in the format required by this RFP. The Lead State will not accept a proposal after the RFP Close Date.
- B. Modified and Alternate Proposals.** Offeror is expected to submit Offeror's most favorable terms and pricing in its original proposal submitted by the RFP Close Date. The Lead State is under no obligation to provide Offeror an opportunity to modify or submit an addendum to Offeror's original proposal or to submit another proposal, including a best and final offer, prior to final evaluation and award. Alternate proposals will not be accepted unless otherwise specified in this RFP.
- C. Discussions, Clarifications, and Demonstrations.** The Lead State may, but is not obligated to, enter into discussions with or request clarifications or demonstrations from one or more Offerors prior to awarding a Master Agreement. Offerors are expected to be ready to participate in discussions, clarifications, or demonstrations with limited notice. Discussions, clarifications, and demonstrations must be consistent with Offeror's original proposal and will become an addendum to Offeror's proposal.
- D. Cost Proposal.**
 1. Offeror must complete all required elements of Attachment I – Cost Proposal. The format and structure of the Cost Proposal is intended to allow for a fair evaluation of like costs among Offerors. Deviation from the format or structure of the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
 2. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
 3. Inclusion of cost or pricing information in any document other than the Cost Proposal may result in Offeror's proposal being deemed non-responsive.
 4. Offeror's proposed costs must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, and personnel. All costs proposed by Offeror must also be inclusive of the NASPO ValuePoint administrative fee. Proposed costs incorporated into a Master Agreement resulting from this RFP represent not-to-exceed pricing and minimum discounts, where applicable. Except as permitted by Subsection 5, pricing offered to Participating Entities and Purchasing Entities must be no higher than pricing set forth in the Master Agreement.
 5. A Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.

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6. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness by the Lead State. Costs determined not to be reasonable or best-value by the Lead State, including any cost to which Offeror's proposed markup or discount is to be applied, may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.
7. At the Lead State's discretion, points earned in the Cost Proposal evaluation may be normalized and scaled to award the Offeror earning the highest total cost score the maximum number of cost points possible.

E. Proposed Modifications to the Sample Master Agreement.

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

F. Proposal Contact.

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

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

H. Firm Offer. Offeror's proposal, including proposed costs, will act as a firm offer for 180 days following the RFP Close Date.

I. Ownership and Disclosure of Proposals.

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

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

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

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

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V. RIGHTS RESERVED TO THE LEAD STATE

A. RFP Contact and Multistate Sourcing Team.

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

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

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

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

D. Cancellation.

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

E. No Exclusivity.

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

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

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G. Conditional Awards.

1. Award and execution of a NASPO ValuePoint Master Agreement by the Lead State is conditioned upon the following:
 - a. Approval by NASPO ValuePoint;
 - b. Approval by any individual or group of individuals required to approve Lead State awards or contracts, including but not limited to legal counsel, an overseeing board, or agency head;
 - c. Continued eligibility for award following resolution of any protests received by the Lead State; and
 - d. Negotiation of Master Agreement terms, conditions, and pricing satisfactory to the Lead State, awarded Offeror, and NASPO ValuePoint.
2. Approval of awards and Master Agreements may be in whole or in part.
3. Awards and Master Agreements not approved by NASPO ValuePoint may, at the Lead State's option, result in a contract for use by the Lead State only.
4. Offeror agrees to hold the Lead State and NASPO harmless and release the Lead State and NASPO from any liability for damages arising from non-award or non-execution of a contract.
5. Nothing in this section affects Offeror's right to file a protest in accordance with Attachment F – Protest Information.

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

VI. POTENTIAL PARTICIPATING ENTITIES

A. Interested States.

1. States that have requested to be named in this RFP as potential participants in the resulting Master Agreement(s) are listed as Interested States in Attachment E – Participation Information. This list neither guarantees execution of a Participating Addendum by an Interested State nor precludes execution of a Participating Addendum by any state or entity not identified as an Interested State.
2. The Estimated Annual Volume in Attachment E – Participation Information aggregates usage estimates, self-reported by the Interested States, which may be based on any factor considered relevant by each Interested State, including historical usage and anticipated future usage. No minimum or maximum level of sales volume is guaranteed or implied.
3. Some Interested States have also provided state-specific terms and conditions that may apply to a Participating Addendum executed with an Offeror awarded a Master Agreement through this RFP. Any terms and conditions included in Attachment E – Participation Information are being provided for informational purposes only and will not be incorporated into the Master Agreement or addressed or negotiated by the Lead State. Participation and the terms and conditions applicable to each Participating Entity will be determined by the Participating Entity following negotiation of a Participating Addendum with a Contractor.

B. Participating Entities.

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

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- b. Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
- c. Federally recognized tribes;
- d. Quasi-governmental entities; and
- e. Eligible non-profit organizations.

2. Prior to execution of a Participating Addendum with an entity described above, a Contractor must coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

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

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

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Attachment B SCOPE OF WORK

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

I. OVERVIEW AND DEFINITIONS

The State of Colorado (Lead State), Department of Personnel & Administration, State Purchasing & Contracts Office (SPCO) is requesting proposals for Body Armor and Ballistic-Resistant Products in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified suppliers to provide new ballistic-resistant vests, spike- and edged-blade-resistant vests, ballistic-resistant helmets, ballistic-resistant shields, ballistic-resistant accessories and associated products, that meet the requirements as established in the following standards:

- National Institute of Justice (NIJ) Standard 0101.06, *Ballistic Resistance of Body Armor*; NIJ Standard 0101.07, *Ballistic Resistance of Body Armor*;
- NIJ Standard 0115.00, *Stab Resistance of Personal Body Armor*;
- NIJ Standard 0115.01, *Stab Resistance of Personal Body Armor*;
- ASTM E3347/E3347M, Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers;
- ASTM E3368/E3368M, Standard Specification for Ballistic-Resistant Helmets Worn by U.S. Public Safety Officers;
- Ballistic-resistant accessories as established in ASTM specifications being implemented during the term of the Master Agreements
- Other relevant standards for Body Armor and Ballistic Protection Products.

Products for which there exists an NIJ Compliant Products List (NIJ CPL) shall be listed on the appropriate NIJ CPL. Products for which there exists an ASTM Verified Products List shall be listed on the appropriate ASTM Verified Products List. 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.

Definitions

| Term | Description |
|-----------|--|
| Accessory | A body armor component that is detachable or removable from the body armor and is intended to provide an extended area of coverage protection against threats that may include ballistic threats, stabbing, fragmentation, blunt impact, or a combination of threats. (ASTM Terminology E3005) |

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| ASTM Verification Mark | Product that has received notice authorizing use of the ASTM verification mark. The name of the standard to which the product is verified shall be stated directly under the ASTM Mark. |
| Authorized Distributor/Distributor | The Supplier's authorized sales representative that must be certified by the Supplier to provide fit services and sales to a Purchasing Entity. An entity that purchases products, takes title, stocks, maintains inventory, resells the product to end-users, and has the ability to do on-site measurements. Also referred to as a subcontractor for the purposes of this solicitation. |
| Award | The identification of Offeror(s) eligible to execute a Master Agreement following completion of the Multistate Sourcing Team's evaluation. |
| Ballistic Panel | A type of armor panel intended to provide the wearer ballistic resistance. (ASTM Terminology E3005) |
| Ballistic-Resistant Accessories | Shoulder, neck, groin, or other ballistic resistant accessories placed on the price list that are not verified or certified at the time of Request for Proposal. Prior to listing on the ASTM Verified Products List, these products will be located on the Non-Market Basket List – Products that are not verified or certified. When ASTM standards are completed for these accessories, Suppliers are expected to have products verified to these standards. |
| Ballistic-Resistant Helmets | Helmets verified to ASTM E3368/E3368M. Helmets not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified. |
| Ballistic-Resistant Shields | Shields verified to ASTM E3347/E3347M. Shields not yet on the ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List – Products that are not verified or certified. |
| Body Armor | An item of personal protective equipment intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005) |
| Carrier | A garment whose primary purpose is to retain the armor panel(s) or plate(s) and provide a means of supporting and securing the armor panel(s) or plate(s) to the wearer. (ASTM Terminology E3005) |
| Combination Armor | A type of body armor intended to protect the wearer from both ballistic threats and stabbing. Combination armor is sometimes called dual-threat or multiple-threat armor. (ASTM Terminology E3005) |
| Concealable Body Armor | A vest designed to be worn under the shirt (uniform or undercover) or in a carrier that looks like a uniform shirt so that it is not easily seen. (ASTM Terminology E3005) |
| Hard Armor | An item of personal protective equipment that is constructed of rigid materials and is intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact, or combinations thereof; synonymous with hard armor plate and plate. (ASTM Terminology E3005) |
| In Conjunction With Armor | Soft or hard armor that is designed to provide a specific level of ballistic protection only when layered with a specific model(s) of body armor. (ASTM Terminology E3005) |
| Insert | A removable unit of protective material (soft armor or hard armor) intended to be placed into a special pocket on a carrier to enhance protection in a localized area. (ASTM Terminology E3005) |
| Lead State | The State issuing this RFP and who centrally administers any resulting Master Agreement(s). |
| Manufacturer | A company that, as its primary business function, designs, assembles, and has the NIJ CPL listing, or ASTM verification for the products being sold under negotiated Master Agreement. |
| Master Agreement | A contract, resulting from this RFP, that is executed by and between a successful Offeror and the Lead State, acting in collaboration with NASPO ValuePoint. |

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| Multistate Sourcing Team | The group of individuals assisting the Lead State with solicitation and contracting activities, which may include but are not limited to development of this RFP, evaluation of Proposals, negotiation of Master Agreements, and evaluation of Supplier performance. |
| NASPO | The National Association of State Procurement Officials |
| NASPO ValuePoint | The cooperative contracting division of NASPO. |
| NIJ | National Institute of Justice |
| NIJ Compliant Products List (NIJ CPL) | The list of models certified by NIJ to be compliant with an applicable standard. |
| NIJ CTP | The NIJ Program that certifies body armor models that meet the requirements of the most current version of the relevant NIJ standard. |
| NIJ Mark | The NIJ certification mark, registered with the U.S. Patent and Trademark Office, that is used to communicate a product's compliance with the NIJ CTP. |
| Offeror | A Manufacturer submitting a proposal in response to this RFP. |
| Order | Any type of encumbrance document or commitment voucher, including, but not limited to, a purchase order, sales order, delivery order, contract or other authorized commitment voucher used by a Purchasing Entity. |
| Participating Addendum | A contract, referencing a Master Agreement, that is executed by and between a Supplier and a Participating Entity and may include Participating Entity-specific requirements and terms. |
| Participating Entity | A state, or another entity authorized to enter into a Participating Addendum, that executes a Participating Addendum with a Supplier. |
| Proposal | The official written response submitted by an Offeror in response to the Request for Proposal. |
| Purchasing Entity | A state, or another entity authorized to use a Participating Addendum, that issues an Order under a Master Agreement resulting from this RFP through a Participating Entity's Participating Addendum. |
| Soft Armor | An item of personal protective equipment constructed of pliable/flexible materials intended to protect the wearer from threats that may include ballistic threats, stabbing, fragmentation, or blunt impact. (ASTM Terminology E3005) |
| Stab Panel | A type of armor panel intended to provide stab resistance. (ASTM Terminology E3005) |
| Supplier | The person or entity providing products under the terms and conditions set forth in the Master Agreement. |
| Tactical Body Armor | A vest designed to be worn over the uniform shirt in a load bearing carrier that accepts various equipment. Equipment may include holsters, magazines, radios, or accessories. (ASTM Terminology E3005) |
| Threat Level | The rated level of protection, according to the relevant standard for the body armor or ballistic-resistant product. |
| Trauma Pack | A soft insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005) |
| Trauma Plate | A hard insert intended to reduce backface deformation due to a ballistic impact. (ASTM Terminology E3005) |
| Vest | Type of body armor intended to protect the wearer's torso. (ASTM Terminology E3005) |

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II. MASTER AGREEMENT OBJECTIVES

Awarded Offeror(s) guarantee(s) a continuing supply and consistent quality of goods and services offered. Awarded Offerors shall maintain compliance with all requirements of the Master Agreement and shall maintain compliance with all requirements throughout the duration of the Master Agreement.

Awarded Offerors and/or Distributors must provide trained personnel to take on-site measurements, for products intended to be worn by end-users, at Purchasing Entity's designated location. Measurements for body armor must be taken in accordance with ASTM E3003 (most recent version), and measurement procedures include using a tape measure and using sizing vests provided by the supplier.

III. MASTER AGREEMENT DELIVERABLES

Proposed Body Armor Products must meet the NIJ, ASTM, and/or any additional product standards as requested by the Lead State for the awarded products. As new standards are published, Suppliers may or may not have transition dates provided to add new products to the Master Agreement. As products are no longer maintained on the NIJ CPL or ASTM Verified Products List, the Lead State will remove them from Supplier's Price List, if not removed by Supplier. If new verification and/or certification programs are completed by NIJ, ASTM, or other recognized conformity assessment body, the Lead State may request new products from Suppliers. When new or revised standards are available, Suppliers will be expected to submit products compliant with the new or revised standards during the term of the Master Agreement. If new standards are published in the last few months of the last term of the Master Agreements Suppliers will not be required to submit new products compliant with new or revised standards. Suppliers will not be required to provide all product types.

Product Standards

- NIJ Standard 0101.06, Ballistic Resistance of Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ 0101.07, Ballistic Resistance of Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- NIJ Standard 0115.00, Stab Resistance of Personal Body Armor. This standard applies until the associated NIJ CPL is no longer maintained by NIJ.
- NIJ Standard 0115.01, Stab Resistance of Personal Body Armor. This standard applies when the associated NIJ CPL is available; The associated NIJ CPL is expected to be maintained by NIJ throughout the time frame of the Master Agreements.
- ASTM E3368/E3368M, Standard Specification for Ballistic-Resistant Helmets Worn by U.S. Public Safety Officers also to include ballistic resistant face shields when on Verified Products List. Helmets not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- ASTM E3347/E3347M Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers. Shields not yet on ASTM Verified Products List will be allowed until 12/31/2026 on the Non-Market Basket List with products that are not verified or certified.
- New or revised product standards for body armor and ballistic-resistant products. Products compliant with new or revised product standards may be added to price lists if requested and approved by the Lead State. Requested additions to price list may or may not be approved in a timely manner.

**Request for Proposals for
Body Armor and Ballistic Resistant Products**

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Product Category

- **Ballistic-resistant Vest:** NIJ Standard 0101.07 Protection Levels HG1, HG2, RF1, RF2, RF3. NIJ Standard 0101.06 Products will be accepted on the price lists until the NIJ CPL for 0101.06 is no longer online. When it is no longer maintained by NIJ these products will not be acceptable on the Master Agreements.
- **Stab-resistant Vest:** NIJ Standard 0115.00 or 0115.01 Spike or Edged Blade Protection Levels 1, 2, and 3. Vest models shall be listed on the NIJ Stab Armor CPL. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **Combination Vest:** Ballistic and Spike and/or Edged Blade: All vests offered as combination vests shall be listed on both the NIJ Ballistic Armor CPL and the NIJ Stab Armor CPL. The ballistic panel shall have the NIJ mark on the label. When available from NIJ, the stab panel shall have the NIJ mark on the label.
- **In Conjunction With Armor:** NIJ -0101.07 Protection Levels **NIJ RF1, NIJ RF2, NIJ RF3**. The **soft armor panels and hard armor plates** shall have the NIJ mark on the label.
- **K-9 Ballistic-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified
- **K-9 Combination Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **K-9 Stab-resistant Vest:** There is no NIJ standard or Compliance Testing Program for K-9 body armor. K-9 vests will be located on the Non-Market Basket List with products that are not verified or certified.
- **Ballistic-resistant Helmets:** ASTM Standard Specification for Ballistic Resistant-Resistant Helmets Worn by U.S. Public Safety Officers ASTM E3368/E3368M. To include ballistic resistant face shields as well when listed on the Verified Products List. Models shall be listed on the ASTM Verified Products List.
- **Ballistic-resistant Shields:** ASTM Standard Specification for Ballistic-Resistant Shields Used by Law Enforcement Officers E3347/E3347M. Models shall be listed on the ASTM Verified Products List.
- **Carriers:** Carriers are an integral part of a vest (providing no ballistic protection), and some types of carriers are: Concealable, uniform shirt, and tactical.

Accessories: includes but is not limited to the following items

- **Ballistic-resistant:** As of the date of the posting of this RFP, NIJ, ASTM or other group does not certify or verify ballistic-resistant accessories. During the term of the Master Agreements, when certification or verification programs are implemented for any of these categories, including shoulder, neck, groin, and other ballistic-resistant accessories, Suppliers will be expected to provide new products in these verification or certification programs. Transition dates may or may not be provided for adding new items to price lists.
- **Groin, yoke, bicep, collar, shoulder, and throat protectors:** To be added to Market Basket list after verification or certification programs are implemented.

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- **Non-ballistic-resistant Products**
- **Trauma pack:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Trauma plate:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Insert (soft armor or hard armor)** To be located on Non-Market Basket list with products that are not verified or certified.
- **Pouches:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Replacement carrier straps:** To be located on Non-Market Basket list with products that are not verified or certified.
- **ID Patches:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Carry bags for concealable vest, tactical vest, shield, and helmet:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Helmet equipment rails, pads, and retention/suspension system:** To be located on Non-Market Basket list with products that are not verified or certified.
- **Shield lights, shoulder straps, logos:** To be located on Non-Market Basket list with products that are not verified or certified.

Product Specifications

Body Armor and Ballistic-Resistant Products must be ordered new and unused, and shall not contain re-used/remanufactured or re-purposed components.

Body Armor and Ballistic-resistant Products that are listed on NIJ-CPL, ASTM-Verified Products List, or other verification or certification program, shall be constructed identically to the original model tested and certified or verified to comply with the NIJ or ASTM Standards referenced in this solicitation or provided by ASTM, NIJ or other body as approved by the Lead State. For body armor and ballistic-resistant products not certified by NIJ or verified by ASTM, the Supplier shall specify the standard(s) and threats against which the product was tested, shall provide attestation of compliance with the standard(s), and shall provide (upon request of the Lead State or Purchasing Entity) the test report.

All materials and construction shall be of the same as reported to NIJ in the "Build Sheet" or in the "submittal package" which lists the materials and construction for the model for NIJ certified products. All materials and construction shall be the same as in the ASTM-required build sheet or submittal package for ASTM verified products.

Workmanship shall be first quality, with no defects that might affect performance, wearability, or durability of the vest.

Products intended to be worn by end users shall not be "bulk ordered" inventory, nor substantially tailored or modified "off the shelf" items. Items worn by end users are to fit personnel as needed, since altering products could potentially change the performance aspects originally tested under NIJ Compliance Testing Program or ASTM Verification Process.

Each product intended to be worn by end users shall be made to professionally conducted measurements intended to fit a specific individual. Under no circumstances shall measurements result in a product that does not properly fit and/or provide adequate protective coverage for that individual.

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All vest measurements must be made according to Supplier procedures and take into account all clearances of panels and duty belts as described in the most recent version of ASTM E3003, Standard Practice for Measurement of Body Armor Wearers and Fitting of Armor.

Available sizes for soft armor vests (handgun protection) shall be consistent with the NIJ Compliance Testing Program requirements for the size range listed on the NIJ CPL.

All Body Armor Products that include the option of additional trauma packs, trauma plates, or inserts shall have the pocket/holder securely attached to keep the inserts in position while worn.

All fasteners, including hook and pile (Velcro), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

The label shall withstand normal wear and cleaning and shall remain legible and attached throughout the entire warranted life of the product. All Body Armor shall be labeled with strict adherence to any applicable laws and regulations and follow the appropriate labeling requirements according to NIJ Standards for body armor or ASTM Verification Mark standards for ballistic-resistant products other than body armor, as updated or amended. This shall include at least the following for applicable products:

- a)** Name of Supplier.
- b)** Location of Supplier.
- c)** Model designation from the relevant NIJ CPL or ASTM Verified Products List (The model designation number shall match the submitted price list and letter of certification/verification.)
- d)** ASTM Verification Mark and name of the standard to which the product is verified
- e)** NIJ Mark and identifier for the relevant NIJ Standard, such as NIJ Standard- 0101.06, NIJ Standard-0101.07 or NIJ Standard-0115.00 or NIJ Standard- 0115.01 (Combination armor shall indicate both).
- f)** Completed manufacturing date
- g)** Lot number.
- h)** Unique serial number.
- i)** Brand name and catalog number.
- j)** A "Property of" space so Purchasing Entity can enter an agency or officer name.
- k)** An "Asset Number" space so Purchasing Entity can enter as needed.
- l)** Basic care and maintenance instructions.
- m)** For body armor and shields, basic care and maintenance instructions.
- n)** Size of product.
- o)** Ballistic protection warranty period.

Supplier, agent, and/or distributor must have the serial numbers stored in a readily accessible database.

Ballistic-resistant components must have at least a 5-year Supplier's warranty.

All carriers must have at least an 18-month Supplier's warranty.

Warranty periods specified shall begin when Body Armor Products are delivered and accepted following inspection by Purchasing Entity.

All fasteners, including hook and pile (Velcro®), non-directional snaps, webbing, side release buckles, Fastex buckles (or approved equivalent), and zippers, shall be the same or similar color, as approved by the Purchasing Entity, as the carrier.

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IV. SUPPLIER RESPONSIBILITIES AND TASKS

Customer Service

Suppliers shall provide a single point of contact for all issues and questions regarding the goods and services provided, including, but not limited to: pricing, product issues, delivery, status of orders, and Contract issues.

Suppliers must provide full service and support for awarded products during normal business hours.

Distributors must be able to service Purchasing Entities within a reasonable time frame, and must have the ability to travel to the Purchasing Entity's specified location once an order, regardless of quantity, has been received.

Distributors shall offer instruction or provide presentations, as requested by Purchasing Entities, regarding the care, usage, and limitation of bullet-resistant and stab-resistant armor.

Ordering and Invoicing Specifications

All items subject to NIJ compliance testing must be listed on the NIJ CPL with a model status of "active" on the date the Order is placed. Items not subject to NIJ compliance testing or ASTM Verification shall have evidence of compliance with an appropriate standard.

Supplier may not provide Body Armor and Ballistic Resistant Products that have not been approved by the Lead State.

The proposed pricing shall be ceiling pricing. Supplier may offer lower pricing on a per Order basis to Purchasing Entities; likewise, Purchasing Entities may request lower pricing on a per Order basis only from Supplier.

All approved Price Lists will be submitted by the Lead State to NASPO ValuePoint. Supplier shall then update all applicable websites with the new Price Lists after the NASPO ValuePoint website has been updated. Supplier is not permitted to send Price List updates directly to NASPO ValuePoint.

All requested changes to price lists, additional products requested to be added, products removed, price modifications or other changes will be provided to the Lead State for approval and will be provided with colored text, or strike through colored text. If price list changes are not clear they may be requested to be modified for clarification.

Pricing must include all shipping, delivery and service costs associated with the product.

All sizing, measurements, and final fitting shall be done at no expense to, and shall be scheduled at the convenience of, the Purchasing Entity.

All orders, regardless of quantity, shall be delivered to Purchasing Entities within sixty (60) calendar days after Manufacturer receipt of order.

The Supplier must coordinate delivery with the Purchasing Entity specified on the order.

Body Armor improperly fitted to an individual wearer shall be altered or replaced and delivered to the individual within thirty (30) calendar days by the Supplier at no expense to the Purchasing Entity.

Product invoice shall contain, at a minimum:

- a)** Name of Purchasing Entity.
- b)** Order date.
- c)** Description of the product ordered.

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- d)** NIJ CPL model designation and Threat Level.
- e)** Serial number.
- f)** Price.
- g)** Any additional information required by the Purchasing Entity.

Packaging Requirements

All Body Armor and Ballistic-resistant products shall be packaged in such a manner as to ensure delivery in undamaged condition.

All packages must be labeled to indicate, at minimum, the Supplier's name and order number and the Purchasing Entity's name, address, and contact person.

Packages that cannot be clearly identified may be refused and/or returned at no cost to the Purchasing Entity.

Delivery Requirements

All deliveries must be FOB Destination; freight prepaid by the Supplier, to the Purchasing Entity's specified location. Responsibility and liability for loss or damage for all orders will remain with the Supplier until final inspection and acceptance, when responsibility will pass to the Purchasing Entity, except the responsibility for latent defects, fraud, and the warranty obligations.

All deliveries shall be made during normal working hours, which may vary for each Purchasing Entity of each Participating State.

It shall be the responsibility of the Supplier to be aware of the delivery days and receiving hours for each Purchasing Entity.

The Purchasing Entity shall not be responsible for any additional charges, should the Supplier fail to observe specific delivery days and receiving hours.

The delivery days and delivery hours shall be established after contract award by each individual Purchasing Entity.

Recycling

Suppliers are encouraged to facilitate recycling of used ballistic panels and other products on behalf of Purchasing Entities.

Recycling programs may be operated in-house by the Supplier, or through contractual or other arrangements which the Supplier shall establish with reputable domestic firms who have an established history of recycling ballistic materials and other products and providing chain of custody documentation.

Expired, unsafe and aged ballistic vests and other personal protection gear are transported to a processor where the material is processed and rendered unusable in ballistic protection applications. After the deconstruction of ballistic panels and/or other technical materials, the fiber is converted into end-use items such as gloves, brake pads, boat ropes, tire treads, etc. This will aid in keeping sensitive ballistic material out of circulation.

Recycled ballistic panels shall be tracked by serial number throughout the recycling process.

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V. LEAD STATE RESPONSIBILITIES AND TASKS

Product List Revisions

As new products are made available; Suppliers may submit these products for consideration by the Lead State. Only products that are new item numbers (i.e., having different materials, styles and/or construction) will be considered. A Supplier may submit new products once per quarter by the 1st day of the quarter, and final approval of new products is at the discretion of the Lead State. New approved products will be listed on the website after approval by the Lead State. For new products submitted after the first of the month, having errors in the submission or errors in the items, or requested changes from the Supplier after initial approval, may have delays in approval for addition to the Master Agreement.

New products receiving Certification or Verification to the NIJ CPL or the ASTM Verified Products List may be added to the price list at the currently existing MSRP/List Price Discount Percentages in between quarters if requested by Supplier and at the discretion and approval of the Lead State.

Suppliers shall notify the Lead State when products previously approved are suspended or removed from the NIJ CPL (e.g., NIJ Safety Notice or NIJ Advisory Notice issued) or removed from the ASTM Verified Products List.

Distributor lists to be provided to the Lead State when changes are requested by Supplier. Agent/Distributor form to be provided with all update requests.

After the first (12) months of the contract, the MRSP/List Price Discount Percentages will be used as one part of a guideline for price change reviews; other parts of the guideline include, but are not limited to, the overall increase from the current contract BID Price.

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Attachment C RFP EVALUATION PLAN

A comprehensive, thorough, complete, and impartial evaluation of each proposal received will be conducted in accordance with §24-103-203(7), C.R.S, which states, "The award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and evaluation factors set forth in the request for proposal."

Stage 1: Initial Responsiveness Evaluation. Proposals will be reviewed for completeness, initial responsiveness, and compliance with all mandatory requirements. Proposals omitting required documents or responses or failing to meet all Mandatory Requirements may be rejected in accordance with Attachment A – RFP Terms and Conditions.

Mandatory Minimum Requirements:

| Criteria | Evaluation | Result |
|---|------------|--------|
| Standards Compliance – Must have products on, or in the process of being on, the NIJ Certified Products List (NIJ CPL) and/or on the ASTM Verified Products List by the RFP Close date. | Pass/Fail | |
| Offeror must submit a completed and signed Offeror Information, Acknowledgements, and Certifications - Attachment G as outlined in the RFP. | Pass/Fail | |
| Offeror must submit a completed Offeror Response Worksheet - Attachment H as outlined in the RFP. | Pass/Fail | |
| Offeror must submit a completed Cost Proposal – Attachment I as outlined in the RFP. | Pass/Fail | |
| Offeror must submit a completed Proposed Modifications to Sample Master Agreement – Attachment J as outlined in the RFP. If proposing modifications, a redlined copy of the Sample Master Agreement – Attachment D must also be submitted as outlined in the RFP. | Pass/Fail | |
| Offeror must submit a completed Claim of Business Confidentiality – Attachment K . If claiming confidential, proprietary, or protected information, a redacted copy of the Proposal clearly marked as such must also be submitted as outlined in the RFP. | Pass/Fail | |
| Offeror must submit a completed Agents and Distributors by State – Attachment L | Pass/Fail | |
| Stage 1 Result: | | |

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

Stage 2: Technical Criteria Evaluation. Proposals meeting or exceeding the Mandatory Minimum Requirements will be evaluated against the following Technical Criteria:

| Attachment | Criteria | Technical Points Possible | Offeror's Technical Points Earned |
|------------|---|---------------------------|-----------------------------------|
| Att. H | II. RESPONSE TO TECHNICAL CRITERIA | 700 | |
| | A. Experience, skills, & qualifications | | |
| | B. Scope of Work | | |

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| | | | |
|--------|--|------------|--|
| | C. Change Management of Standards | | |
| | D. Warranty, Service, etc. | | |
| | E. Implementation and Promotion of the NASPO ValuePoint Master Agreement | | |
| Att. J | Acceptance of Sample Master Agreement Terms & Conditions with no Redlines (as indicated in Attachment J) | 50 | |
| | Stage 2 Total: | 750 | |

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

The Lead State and Multistate Sourcing Team will then determine which proposals will proceed to Stage 3: Cost Evaluation. Methods used to make this determination may include, but are not limited to, one or more of the following:

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

Stage 3: Cost Evaluation. Cost Proposals for proposals not rejected following evaluation of Technical Criteria will be evaluated based on MSRP/List Price Discount Percentages. The contents of Attachment I – Cost Proposal will be scored as follows:

MSRP/LIST PRICE PERCENTAGE DISCOUNTS

| Category | Highest Responsive Proposal Percentage Discount | Offeror's Proposed Percentage Discount | Cost Points Possible | Offeror's Cost Points Earned |
|---|---|--|----------------------|------------------------------|
| Market Basket 0101.07 (category discount) | % | % | 125 | |
| Market Basket 0101.06 (average discount for category) | % | % | 125 | |
| | | Total: | 250 | |

| Category | Highest Responsive Proposal Percentage Discount | Offeror's Proposed Percentage Discount | Cost Points Possible | Offeror's Cost Points Earned |
|---|---|--|----------------------|------------------------------|
| ASTM Helmets & Shields (category discount) | % | % | 125 | |
| Non-Market Basket Helmets & Shields (average discount for category) | % | % | 125 | |
| | | Total: | 250 | |

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| Category | Highest Responsive Proposal Percentage Discount | Offeror's Proposed Percentage Discount | Cost Points Possible | Offeror's Cost Points Earned |
|---|---|--|----------------------|------------------------------|
| Non-Market Basket (not including Helmets & Shields) (average discount for category) | % | % | 250 | |
| | | Total: | 250 | |

The formula for calculating cost points earned for MSRP/List Price Percentage Discounts for each category is:

$$\frac{\text{Offeror's Proposed Percentage Discount}}{\text{Highest Responsive Proposal Percentage Discount}} \times \text{Cost Points Possible}$$

The Lead State reserves the right to modify this formula and/or assign a nominal value to "0" cost values if application of the formula results in an error, negative numbers, or an unreasonably skewed distribution of points.

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

Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State, including any cost to which Offeror's proposed markup or discount is to be applied, may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal evaluation.

MSRP/List Price Discount Percentages are for evaluation purposes and must be guaranteed to be the same or increased for any new product offered throughout the life of the contract.

Evaluation Summary

| Stage | Total Points Possible | Offeror's Total Points Earned |
|---|-----------------------|-------------------------------|
| Technical Criteria Evaluation | 750 | |
| Cost Evaluation (Market Basket 0101.07 & 0101.06) | 250 | |
| Total: | 1000 | |

| Stage | Total Points Possible | Offeror's Total Points Earned |
|--|-----------------------|-------------------------------|
| Technical Criteria Evaluation | 750 | |
| Cost Evaluation (ASTM Helmets & Shields & Non-Market Basket Helmets & Shields) | 250 | |
| Total: | 1000 | |

| Stage | Total Points Possible | Offeror's Total Points Earned |
|---|-----------------------|-------------------------------|
| Technical Criteria Evaluation | 750 | |
| Cost Evaluation (Non-Market Basket) (not including Helmets & Shields) | 250 | |
| Total: | 1000 | |

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Award Selection

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

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

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

Following approval of NASPO ValuePoint and the approvals required by the Lead State, the Lead State will post a public notice of intent to award and begin negotiations with successful Offerors after the conclusion of the Protest Period.

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Attachment D
SAMPLE MASTER AGREEMENT

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

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

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1.12 Product or Products and Services means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

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

II. Term of Master Agreement

2.1 Initial Term. The initial term of this Master Agreement is for two (2) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

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

2.3 Amendment Term. The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 Order. Any Order placed under this Master Agreement will consist of the following documents:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

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3.3 Participating Addenda. Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

IV. Participants and Scope

4.1 Requirement for a Participating Addendum. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

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

4.3 Obligated Entities. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.4 Notice of Participating Addendum. Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluerpoint.org to support documentation of participation and posting in appropriate databases.

4.5 Participating Entities.

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

- 4.5.1.1** Political subdivisions, public agencies, and service districts;
- 4.5.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
- 4.5.1.3** Federally recognized tribes;
- 4.5.1.4** Quasi-governmental entities; and
- 4.5.1.5** Eligible non-profit organizations.

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4.5.2 Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

4.6 **Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

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

4.8 **Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.9 **No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

5.1 **Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

5.2 **Administrative Fees**

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

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included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

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

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

5.3.3 Detailed Sales Data. "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

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

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

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

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

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

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

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at

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the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 NASPO ValuePoint eMarketPlace

- 5.5.1** The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.
- 5.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.
- 5.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.
- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms, products, services, and pricing of this Master Agreement.

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- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. All product lists provided on the eMarketplace must be approved by the Lead State. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (e.g., restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.
- 5.5.11** Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.
 - 5.5.11.1** Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.
 - 5.5.11.2** Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.
 - 5.5.11.3** NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.
 - 5.5.11.3.1** Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.
 - 5.5.11.3.2** Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated

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with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.

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

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

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

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

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

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

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VI. Pricing, Payment & Leasing

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

- 6.1.1** All prices and minimum rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Following the first twelve (12) months of the Master Agreement period, any request for price adjustments must be for an equal guarantee period and must be received by the Lead State Contract Administrator at least 120 days prior to the requested effective date. Requests for price adjustments 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 pricing will be allowed prior to the effective date unless the pricing is decreased.
- 6.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
- 6.1.4** No retroactive adjustments to prices or rates will be allowed.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

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

VII. Ordering

7.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

7.2 Quotes. Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This quote 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.

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

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

7.5 Term of Purchase. Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

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

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

7.6 Order Form Requirements. All Orders pursuant to this Master Agreement, at a minimum, must include:

7.6.1 The services or supplies being delivered;

7.6.2 A shipping address and other delivery requirements, if any;

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

7.6.5 Pricing consistent with this Master Agreement or as adjusted by agreement of the Purchasing Entity and Contractor (i.e. volume discount, state-specific administrative fee, etc.);

7.6.6 A not-to-exceed total for the products or services being ordered; and

7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

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- 7.7 Communication.** All communications concerning administration of Orders placed must 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.
- 7.8 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.

VIII. Shipping and Delivery

- 8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.
 - 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

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9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

9.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to this section.

9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

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

XI. Product Title

- 11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XII. Indemnification

- 12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to

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tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

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

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

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

12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

13.1 Term. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

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

13.3 Coverage. Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

- 13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

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

13.5 Notice of Endorsement. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

13.6 Participating Entities. Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

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

13.8 Disclaimer. Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and

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administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

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

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Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

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

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

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

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

14.3 Assignment/Subcontracts

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

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

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

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

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

14.7 Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which

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are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14.8 Defaults and Remedies

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

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

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

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

- 14.8.3.1** Any remedy provided by law;
- 14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
- 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
- 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
- 14.8.3.5** Suspension of Contractor's performance; and
- 14.8.3.6** Withholding of payment until the default is remedied.

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

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

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

14.11 **No Waiver of Sovereign Immunity**

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

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

14.12 **Governing Law and Venue**

14.12.1 The procurement, evaluation, and award of the Master Agreement will be governed by and construed in accordance with the laws of the Lead State sponsoring and

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

- 14.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.
- 14.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.
- 14.13** **Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.
- 14.14** **Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

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**Attachment E
PARTICIPATION INFORMATION**

The NASPO ValuePoint Process

The NASPO ValuePoint Lead State Model™ is a collaborative procurement process representing the input and interests of public entities across the nation.

THE LEAD STATE MODEL™

-  Members & Stakeholders Identify Shared Cooperative Contracting Needs
-  NASPO ValuePoint Engages Lead State & Multistate Sourcing Team
-  Members & Stakeholders Provide Input on RFP Specifications & Objectives
-  Lead State Issues RFP in Compliance with Lead State Laws
-  Lead State & Multistate Sourcing Team Evaluate Supplier Proposals
-  Lead State Negotiates & Executes Master Agreements
-  Participating States & Entities Execute Participating Addenda
-  Purchasing Entities Buy Directly from NASPO ValuePoint Contractors

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

Historical Usage

The following table identifies total sales reported by Body Armor and Ballistic Resistant Products contractors through NASPO ValuePoint Master Agreements over the past five (5) calendar years:

| Year | Reported Historical Sales Volume |
|------|----------------------------------|
| 2019 | \$ 38,355,994.07 |
| 2020 | \$ 36,468,864.30 |
| 2021 | \$ 61,045,696.91 |
| 2022 | \$ 65,324,430.76 |
| 2023 | \$ 70,251,238.76 |

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

Interested States

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

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| Interested States | Reported Estimated Annual Volume | Sample Participating Addendum Terms and Conditions |
|-------------------|----------------------------------|--|
| Alaska | Unknown | Exhibit A |
| Colorado | \$ 3,750,000.00 | Exhibit B |
| Connecticut | \$ 2,500,000.00 | N/A |
| Florida | \$ 10,600,000.00 | N/A |
| Hawaii | \$ 1,000,000.00 | Exhibit C |
| Minnesota | \$ 4,000,000.00 | N/A |
| Montana | Unknown | Exhibit D |
| Nevada | \$ 800,000.00 | N/A |
| North Carolina | \$ 1,800,000.00 | Exhibit E |
| North Dakota | \$ 700,000.00 | N/A |
| Oregon | \$ 2,148,010.00 | N/A |
| Rhode Island | \$ 88,000.00 | Exhibit F |
| South Dakota | \$ 1,500,000.00 | N/A |
| Utah | \$ 1,220,000.00 | Exhibit G |
| Washington | \$ 4,500,000.00 | Exhibit H |

TOTAL ESTIMATED ANNUAL VOLUME FROM INTERESTED STATES: \$ 34,606,010.00

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

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

Exhibit A - State of Alaska Required Terms

The following language is now required by the State of Alaska, to be included as an additional section of the Participating Addendum:

CANCELLATION. By signing this Addendum, the Contractor certifies that they will not support or participate in a boycott of the State of Israel. Failure to comply with this requirement may cause the state to cancel this participating addendum (Alaska Administrative Order No. 352).

Exhibit B - State of Colorado Special Provisions

COLORADO SPECIAL PROVISIONS

(Fiscal Rule 3-3, effective 7/1/22)

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

Exhibit C - State of Hawaii General Conditions

GENERAL CONDITIONS

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Exhibit C - State of Hawaii General Conditions

GENERAL CONDITIONS

1. **Coordination of Services by the STATE.** The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. **Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.**
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

Exhibit C - State of Hawaii General Conditions

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

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

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

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

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

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

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

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.

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

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

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

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

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

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

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

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

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

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

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

- c. **Termination of stopped performance.** If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. **Adjustment of price.** Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

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

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

- c. **Compensation.** Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. **Excuse for nonperformance or delayed performance.** The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. **Erroneous termination for default.** If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. **Additional rights and remedies.** The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. **Termination.** The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. **CONTRACTOR'S obligations.** The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

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- c. **Right to goods and work product.** The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

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

- d. **Compensation.**
 - (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
 - (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
 - (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

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

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

Exhibit C - State of Hawaii General Conditions

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
- e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
- g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
- h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.

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

- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
- (2) Method of delivery; or
- (3) Place of delivery.

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

Exhibit C - State of Hawaii General Conditions

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

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

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

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

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

Exhibit C - State of Hawaii General Conditions

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
- (5) Method of shipment or packing of supplies; or
- (6) Place of delivery.

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

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

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

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

24. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
- b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

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

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

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

Exhibit C - State of Hawaii General Conditions

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

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

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

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

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

31. **Records Retention.**

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

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

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

Exhibit C - State of Hawaii General Conditions

34. **Governing Law.** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. **Compliance with Laws.** The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. **Conflict Between General Conditions and Procurement Rules.** In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. **Entire Contract.** This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. **Severability.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. **Waiver.** The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. **Pollution Control.** If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. **Campaign Contributions.** The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. **Confidentiality of Personal Information.**
 - a. **Definitions.**

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

 - (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

Exhibit C - State of Hawaii General Conditions

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

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

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

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

Exhibit C - State of Hawaii General Conditions

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

e. Records Retention.

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

Exhibit C - State of Hawaii Required FEMA Special Provisions

SPECIAL PROVISIONS

(REQUIRED FEMA DISASTER PROVISIONS)

1. Administrative, Contractual, or Legal Remedies

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

2. Termination for Cause and for Convenience

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

3. Equal Employment Opportunity

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

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

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

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

Exhibit C - State of Hawaii Required FEMA Special Provisions

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

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

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

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

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

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

Exhibit C - State of Hawaii Required FEMA Special Provisions

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

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

[followed by Subsections (A) through (G)]

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

4. Davis-Bacon Act

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

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

Exhibit C - State of Hawaii Required FEMA Special Provisions

5. Contract Work Hours and Safety Standards Act

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

6. Clean Air Act and Federal Water Pollution Control Act

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

7. Energy Efficiency

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

8. Excluded Parties List System

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

9. Byrd Anti-Lobbying Amendment

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

Exhibit C - State of Hawaii Required FEMA Special Provisions

10. Recovered and Recycled Materials

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

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

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

12. Domestic Preferences for Procurements

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

Exhibit D - State of Montana PA Terms and Conditions

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

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

1. PAYMENT TERM

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

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

2. U.S. FUNDS

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

3. REFERENCE TO PA

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

4. STATE OF MONTANA ADMINISTRATIVE FEE

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

5. REQUIRED REPORTING

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

First Quarter: July 1 through September 30;

Exhibit D - State of Montana PA Terms and Conditions

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

6. TAXES

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

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

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

7. DELIVERY

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

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

8. INSURANCE

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

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

8.1 General Insurance Requirements

Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance protecting State, its elected and appointed officials, agents, and employees against claims for bodily injury, death, personal injury, property damage, and contractual liability, which may arise from or in connection with the negligence of Contractor, its employees, agents, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission. If Contractor maintains higher limits than the minimums required in this Contract, State is entitled to coverage up to the higher limits maintained by Contractor.

8.2 Primary Insurance

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All insurance maintained by Contractor, or any subcontractor as required by this Contract will be primary insurance for Contractor's negligence for State its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers will be in excess of Contractor's insurance and will not contribute with it.

8.3 Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer will reduce or eliminate such deductibles or self-insured retentions for State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor will procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

8.4 Certificate of Insurance/Endorsements

A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The certificates must name the State of Montana as certificate holder, and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, or changes in status of policy. State reserves the right to require complete copies of insurance policies at all times.

8.5 Commercial General Liability

Contractor shall purchase and maintain coverage at least as broad as Insurance Services Form CG 00 01 covering commercial general liability (CGL) on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its employees, officers, officials, agents, representatives, assigns, or subcontractors.

Contractor grants to State a waiver of any right to subrogation that any insurer of Contractor may acquire against State by virtue of the payment of any loss under insurance. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether State has received a waiver of subrogation endorsement from Contractor's insurer.

State, its employees, officers, officials, agents, and volunteers are to be covered and listed as additional insureds for liability arising out of services

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performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such services.

8.6 Compliance With Workers' Compensation Act

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

9. RECORD ACCESS AND RETENTION

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

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

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

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

11. WARRANTIES

11.1 Warranty of Products

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

11.2 Warranty of Services

Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a

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

11.3 Warranty of Title

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

11.4 Warranty on Safety and Health Requirements

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

11.5 Manufacturer Warranties

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

11.6 Warranties Cumulative

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

11.7 Warranty For Services

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

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G. The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

12. PUBLIC INFORMATION

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

13. RIGHT TO ASSURANCE

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

14. STOP WORK ORDER

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

15. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

15.1 Indemnities by Contractor

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

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- A. Any acts or omissions of Contractor, its employees, subcontractors, assignees, or third-party providers in or in connection with the execution or performance of the Contract and any purchase order issued under the Contract, except for the sole negligence of State.
- B. Any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in or in connection with the execution or performance of the Contract and any purchase orders issued under the Contract, or
- C. Tax liability, unemployment insurance, workers' compensation, or expectations of benefits by Contractor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.

15.2 Coordination of Defense

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

15.3 State Reimbursement

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

16. LIMITATION OF LIABILITY

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

17. COMPLIANCE WITH LAWS

In performing its duties in this Contract, Contractor shall comply with all applicable federal, state, or local laws, rules, ordinances, policies, and executive orders.

Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

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

- A. the hiring of persons to fulfill Contractor's duties in this Contract will be made based on merit and qualifications; and
- B. there will be no discrimination based on race, color, sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, political or religious

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

Any subcontracting by Contractor obligates subcontractors to the above.

Nondiscrimination Against Firearms Entities/Trade Associations. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the Contract against a firearm entity or firearm trade association. This Section shall be construed in accordance with 30-20-301, MCA.

18. CONTRACT TERMINATION

18.1 Termination for Convenience

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

18.2 Termination for Cause with Notice to Cure Requirement

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

18.3 Reduction of Funding

State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through State's budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated

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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.

19. Terrorism, Suspension or Debarment, or Otherwise Ineligible

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

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

20. EVENT OF BREACH – REMEDIES

20.1 Event of Breach by Contractor

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

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

20.2 Event of Breach by State

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

20.3 Actions in Event of Breach

Upon Contractor's material breach, State may:

- A. Terminate this Contract under Section 20.1, Termination for Convenience and pursue any of its remedies under this Contract, at law, or in equity; or
- B. Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.
- C. Upon State's material breach, Contractor may:

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- a. Terminate this Contract under Section 20.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- b. Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

22.4 WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

21. FORCE MAJEURE

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

22. CONFORMANCE WITH CONTRACT

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

23. MEETINGS

23.1 Technical or Contractual Problems.

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

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consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

23.2 Progress Meetings

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

23.3 Failure to Notify

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

23.4 State's Failure or Delay

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

24. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the

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expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

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

25. CHOICE OF LAW AND VENUE

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

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

26. AUTHORITY

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

27. SEVERABILITY

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

28. WAIVER

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

29. PUBLIC DISCLOSURE

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

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30. SURVIVAL

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

(The remainder of this page is intentionally left blank)

Exhibit D - State of Montana Federal Terms and Conditions

Federal Terms and Conditions (Non-Construction)

**NOTE: NO EXCEPTIONS TO THE LISTED FEDERAL TERMS AND CONDITIONS WILL BE
CONSIDERED. STATE IS NOT PERMITTED TO ALTER THESE TERMS AND CONDITIONS
THROUGH OUR FEDERAL PARTNER.**

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, Contractor/Vendor agrees to acceptance of the following Federal Terms and Conditions along with all other provisions that are specific to this solicitation or contract as applicable.

1. Nondiscrimination

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

- 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

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.

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Exhibit D - State of Montana Federal Terms and Conditions

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 parties to this Contract agree 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

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

4. Environmental Protection

- a. 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 specifies 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;
- b. In accordance with the EPA rules, the parties further agree Contractor/Vendor shall also identify to State any impact this Contract may have on:
 - 1) The quality of the human environment and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to Preparing 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 State provides written notification of compliance with the environmental impact analysis process.
 - 2) Flood-prone areas, and provide assistance when State may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
 - 3) Coastal zones, and provide assistance when State 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.

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- 4) Coastal barriers, and provide assistance when State may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et seq.), concerning preservation of barrier resources.
- 5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide assistance when State may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
- 6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide assistance when State may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

5. Use of United States Flag Vessels/Cargo Preference

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.

Contactor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. Debarment and Suspension

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Contract. Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in Contractor's contract files and shall be subject to audit by Federal and State auditing.

7. Buy American Act

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 (EEC) 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.

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8. Uniform Relocation Assistance and Real Property Acquisition Policies

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

Contractor agrees that it will comply with the Copeland "AntiKickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this Contract, the Copeland "AntiKickback" 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 Act

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this Contract, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this Contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 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/Vendor 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 State.

12. Clean Air Act and Federal Water Pollution Control Act (

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 State who in turn will report to the Federal awarding agency and the EPA Regional Office.

13. Byrd Anti-Lobbying Amendment

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

[Enter Contract Number]

[Enter Contract Name]

Exhibit TBD Page 4 of 5

Exhibit D - State of Montana Federal Terms and Conditions

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. **System For Award Management and Unique Entity Identification Number**

Contractor agrees to comply with the System for Award Management (Sam.gov) maintained by the General Services Administration. Contractor shall provide a Unique Entity Identification Number assigned to it.

15. **Procurement of Recovered Materials**

Contractor 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.

16. **2 C.F.R. 200.326, Appendix II, Required Contract Clauses**

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this Contract as applicable. Contractor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this Contract with State.

17. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

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

The National Defense Authorization Act of 2019 (Section 889) requires federal government purchase cardholders to obtain assurance from merchants that merchants are not using telecommunications equipment, systems, or services produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of these companies); or video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). The merchant assurance is provided as a "representation" signed by the merchant's authorized representative.

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NORTH CAROLINA GENERAL TERMS & CONDITIONS

1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See, G.S. 25-2-712.* In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and

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specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license

to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

3. INTERPRETATION, CONFLICT OF TERMS:

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.

4. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

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5. AVAILABILITY OF FUNDS: Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.

6. TAXES: Any applicable taxes shall be invoiced as a separate item.

- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
- b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
- c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

7. SITUS AND GOVERNING LAWS:

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. NON-DISCRIMINATION COMPLIANCE:

Wholly State Funded Contracts.

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended

by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

Contracts Part ally or Wholly Federally Funded.

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

c) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

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

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

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

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

g) The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

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

j) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may

direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.

- k) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- l) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- m) The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

9. PAYMENT TERMS: Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. CONDITION AND PACKAGING: Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured,

and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

11. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY: Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and

2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 1. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 2. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

12. ADVERTISING: Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

13. ACCESS TO PERSONS AND RECORDS:

- (a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.
- (b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:
 1. The State Auditor.
 2. The internal auditors of the affected department, agency or institution.
 3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.

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(c) The Joint Legislative Commission on Governmental Operations has the authority to:

1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
4. Receive reports as required by law or as requested by the Commission.
5. Access and review
 - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

(d) The Joint Legislative Commission on Governmental Operations has the power to:

1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.

(e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.

(f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.

(g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.

(h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

14. ASSIGNMENT OR DELEGATION OF DUTIES:

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

15. INSURANCE: This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

1. Potential for damage to State property or property of a third party,
2. Potential for bodily injury to State employees or third parties,
3. Whether Vendor will transport State property, clients, or employees,
4. Use of a vehicle to accomplish the work or to travel to or from State locations,
5. Anticipated physical contacts of the Vendor with the State,
6. Anticipated number and activity of Vendor personnel within the State, and
7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

- a) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
 1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
 - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the

Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.

- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**

- i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- ii. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- iii. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

16. GENERAL INDEMNITY:

- a) The Vendor shall indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense shall defend any action brought against the State, under this section. The Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- c) The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. See, G.S. 22B-3, -10.

17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)**GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:**

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES

- d) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT SERVICE).** *G.S. 66-58.12; See, NC E-Procurement Terms of Use.* This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Contract.
- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee, or it shall be considered a material breach of Contract.

Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

- 18. SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.

19. CONFIDENTIALITY: Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).

20. CARE OF STATE DATA AND PROPERTY: Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 *et seq.* **Notice** is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

21. OUTSOURCING: Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 14359.4.

22. ENTIRE AGREEMENT: The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

23. ELECTRONIC RECORDS: The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurementrelated documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

24. AMENDMENTS: This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

25. NO WAIVER: Notwithstanding any other language or provision in the Contract or in any Vendorsupplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

26. FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.

27. SOVEREIGN IMMUNITY: Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.

28. FEDERAL FUNDS PROVISIONS:

Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract. Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

Any links to websites not maintained by the State are provided as a courtesy. The State does not warrant or guarantee the accuracy of the hyperlink or the information contained therein.

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).

3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. *SubContracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

e) **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

Clean Air Act

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

Federal Water Pollution Control Act

1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

f) **Debarment and Suspension.**

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

g) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (as Amended).**

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall 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 shall also disclose any lobbying with nonFederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

h) **Procurement of Recovered Materials.**

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPAdesigned items unless the product cannot be acquired:
 - Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - Meeting Contract performance requirements; or
 - At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "ACCESS TO PERSONS AND RECORDS" included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

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- j) **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "AMENDMENTS," except as approval and signature by any federal official may also be required.
- k) **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
- l) **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "ADVERTISING," the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.
- q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

Exhibit F - State of Rhode Island Terms and Conditions

State of Rhode Island specific terms and conditions:

This Master Agreement shall be subject to the Rhode Island "State Purchases Act", R. I. Gen. Laws § 37-2-1, et seq., the Rhode Island Procurement Regulations and the Rhode Island General Conditions of Purchase (copy attached). Jurisdiction and venue for any lawsuits arising here from shall be in the Providence Superior Court and shall be governed by the laws of the State of Rhode Island without reference to its principles of conflicts of laws.

<https://rules.sos.ri.gov/regulations/part/220-30-00-13>

<https://www.ridop.ri.gov/rules-regulations/> (General Conditions- Addendum A)

MPA 1% ADMIN FEE

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

Exhibit G - State of Utah Cooperative Standard Terms and Conditions

STATE OF UTAH COOPERATIVE STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **Confidential Information** means information that is deemed as confidential under applicable state and federal laws, and personal data as defined in Utah Code 63A-19-101. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **Contract** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) **Contract Signature Page(s)** means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) **Contractor** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **Custom Deliverable** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) **Division** means the Division of Purchasing and General Services.
 - g) **Eligible User(s)** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) **End User Agreement** means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) **Goods** means all types of tangible personal property, including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract.
 - j) **Procurement Item** means Goods, a supply, Services, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - k) **Response** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - l) **Services** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - m) **Solicitation** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - n) **State of Utah** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - o) **Subcontractors** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - p) **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

Exhibit G - State of Utah Cooperative Standard Terms and Conditions

Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible

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User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

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

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

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

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

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

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

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

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

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

19. RESERVED.

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

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Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

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

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

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

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

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

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

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

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

1. Contractor has received payment for the Custom Deliverables,

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

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specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

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

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

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

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

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

31. **CONFIDENTIALITY:** If Contractor has access to or processes Confidential Information, 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) comply with any requirements contained in the contract regarding permitted uses and disclosures of personal data, measures designed to safeguard personal data, and the destruction of personal data. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information, including any data breaches, in accordance with UCA 63A-19 Government Data Privacy Act. In Accordance with UCA 63A-19, Contractor must comply with all the same requirements regarding personal data as the State.

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

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

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

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

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

35. REPORTS AND FEES:

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

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

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

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

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

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

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

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

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

39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.

41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.

43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any Procurement Item(s), supplies, 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 Procurement Item(s) supplies,, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

44. **CHANGES IN SCOPE:** Any changes in the scope of the Procurement Item(s) to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of the Procurement Item(s).

45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.

46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of the Procurement Item(s) under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.