

Master Agreement #: **AR2482** (*hereinafter "Master Agreement"*)

Contractor: **ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.** (*hereinafter "Contractor"*)

Participating State: **STATE OF HAWAII** (*hereinafter "Participating State"*)

State of Hawaii, State Procurement Office (SPO) Vendor List Contract No. 17-18 (herein after "Contract")

Amendment #2 (*hereinafter "Amendment"*) of Participating Addendum for Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number AR2482 with Environmental Systems Research Institute, Inc. is amended as follows:

Amend the numbering for Insurance in Amendment #1 from "Section 2. Insurance" to "Section 3, subsection I. Insurance"

Add Section 3, subsection I. Subsection I, section i – "Quarterly Sales Reporting," replaces in its entirety Section 3, subsection A – "Usage Reports." Subsection A is no longer used.

I. eProcurement System and Marketplace

The State of Hawaii, State Procurement Office, has instituted a statewide eProcurement system, Aloha eBuys. Periscope Holdings, Inc. ("Periscope"), the State's eProcurement system provider, has implemented Aloha eBuys, which will allow Participating Entities to easily search and purchase from this Price/Vendor List Contract. Therefore, Contractor acknowledges and agrees to the following, which requirements are separate from and additive to any of Contractor's requirements under the NASPO ValuePoint Master Agreement.

- i. Quarterly Sales Reporting – As of the effective date of this Amendment, the Contractor shall be required to submit a quarterly report documenting all Sales made under the Contract ("Quarterly Sales Report"). "Sales" shall mean total invoices for gross purchases, less any credits, taxes, regulatory fees, and separately stated shipping charges not included in unit prices, procured on or utilizing pricing and/or other terms of this Contract, regardless of the purchase process. The Quarterly Sales Report shall be submitted directly to Periscope using the Reconciler portal (Periscope's reporting tool to which a link shall be provided to Contractor), or otherwise as reasonably directed by Periscope or State. Quarterly Sales Report will include any periods less than a full calendar quarter if Amendment and/or Contract does not start at the first day of a quarter or end on the last day of the quarter.

Contractor shall submit one Quarterly Sales Report for each contract for each reporting period in accordance with the following schedule:

	Date Range	Due No Later Than
Fiscal Year, Quarter 1	July 1 – September 30	October 31
Fiscal Year, Quarter 2	October 1 – December 31	January 31
Fiscal Year, Quarter 3	January 1 – March 31	April 30
Fiscal Year, Quarter 4	April 1 – June 30	July 31

The Quarterly Sales Report must contain the following information:

- a. Complete and accurate details of all Sales, credits, returns, refunds, and the like for the reporting quarter;
- b. Purchasing Participating Entity and type;
- c. Product/service description, unit price, quantity and total sale amount;
- d. Invoice number and date;
- e. Total Vendor Collected Administrative Fee amount due for the reporting quarter. "Vendor Collected Administrative Fee (VCAF)" shall mean that for all Sales made under or utilizing the pricing or other terms of the Contract that have been invoiced, the Contractor shall remit a VCAF in the amount of one and one-half percent (1.5%) of all Sales to Periscope on behalf of the State;
- f. Such other information as the State and Periscope may reasonably request; and
- g. If no Sales were made during the reporting quarter, then a Quarterly Sales Report shall still be submitted showing zero Sales and zero VCAF due.

Initiation and submission of the Quarterly Sales Report are the responsibility of the Contractor without prompting or notification by Periscope or the State, and Periscope and the State assume no responsibility for any Contractor's failure to meet its sales reporting and fee remittance obligations. The State reserves the right to contact Contractor at any time to request that Contractor attest to the amounts reported to have been paid to them by Participating Entities.

The State, NASPO Valuepoint and Periscope shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

- ii. Remittance of the VCAF – On a quarterly basis, and at the same time as the submission of the Quarterly Sales Report per the above, the Contractor shall remit the VCAF via Automated Clearing House (ACH) transaction directly to Periscope using the Reconciler portal, or as otherwise reasonably directed by Periscope or the State, no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end September 30, December 31, March 31, and June 30 of each year. Periscope's or the State's receipt or acceptance of any Quarterly

Sales Report and/or VCAF furnished pursuant to the Contract shall not preclude Periscope or the State from challenging the validity thereof at any time. Failure to remit the Quarterly Sales Report and/or VCAF timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the Aloha eBuys marketplace. Continued non-compliance by the Contractor may result in the Contractor being found in default of the Contract and, thus, may be subject to termination. Assistance with VCAF remittance is available from the Periscope Customer Service by email or telephone, which contact information shall be providing during Contractor's onboarding.

- iii. Catalog Implementation – Contractor shall cooperate with State and/or Periscope as requested, including attendance of meetings, to include and maintain throughout the term an Aloha eBuys marketplace catalog of products and services consistent with and limited to the Contract items. Contractor may choose one of the following catalog options.
 - a. Hosted Catalog – Contractor shall provide a list of its awarded products and services (including product name, descriptions, images, relevant specifications, keyword search terms, etc.) and pricing consistent with the Contract and in the electronic format provided by Periscope. The product and service list may only provide the awarded products and services at prices listed in the Contract, including quantity and other discounts. In order to maintain the most up-to-date version of the product and service list in compliance with Contract terms, Contractor must provide updated product and service pricing information via electronic format approved by Periscope at least annually but no more than four times per year or as otherwise permitted by the Contract.
 - b. Punchout Catalog – Contractor shall “punch out” to its own online catalog, provided that its own online catalog is capable of being integrated with the Aloha eBuys marketplace via Commerce eXtensible Markup Language. Contractor's punchout catalog may only provide the awarded products and services at prices listed in the Contract, including quantity and other discounts. Contractor must validate its punchout catalog is current by providing a written update to Periscope every four (4) months (or as otherwise provided in the Contract), verifying that Contractor has audited the offered products and services and pricing.

Any price stated by Contractor under the Contract (including in its hosted or punchout catalog) shall be inclusive of the VCAF, and Contractor shall not reflect the VCAF as a separate line item on customer quotes and invoices.

Contractor shall 1) attend a vendor onboarding meeting with Periscope within thirty (30) days of the date of execution of this Amendment, and 2) complete upload of the hosted catalog or integration of the punchout catalog as well as the approval

process(es) within ninety (90) calendar days of the date of execution of this Amendment. Contractor shall cooperate with State and Periscope for any other reasonable requests to ensure a catalog's accurate depiction of the Contract.

Any changes to Contractor's catalog permitted by the Contract must be pre-approved in writing by the State.

- iv. Vendor and Contract Performance Reviews – The State and/or Periscope may reasonably request Contractor to participate virtually in an annual business review, for which review Contractor shall provide Contract sales information as well as marketing action plans, target strategies and staff training plans and requirements designed to grow utilization of the Contract. Notwithstanding the foregoing, such sales information pursuant to this section shall exclude those pertaining to overhead, general and administrative, and profit expenses. Periscope shall also provide and discuss Quarterly Sales Reporting and VCAF remittance compliance data. The State, NASPO Valuepoint and Periscope shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- v. Retention and Inspection of Records and Audit – The Contractor shall keep records of all Sales in sufficient detail to enable the State or Periscope to determine the VCAF payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's Sales records and Sales Reports for completeness and accuracy. Notwithstanding the foregoing, such records and reports pursuant to this section shall exclude those pertaining to overhead, general and administrative, and profit expenses. The records and reports shall be for the internal use of the State and/or Periscope and shall not be shared with 3rd parties. If such examination reveals underpayment of the VCAF, the Contractor shall immediately pay to Periscope the amount of deficiency. If the examination reveals an underpayment of 20% or more, and that 20% or more is greater than \$4,000, then the Contractor shall reimburse the State and Periscope for the cost of the audit.

NASPO ValuePoint
AMENDMENT #2
PARTICIPATING ADDENDUM
CLOUD SOLUTIONS
Led by the State of Utah



THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT THROUGH THEIR AUTHORIZED REPRESENTATIVES WITH FULL KNOWLEDGE OF AND AGREEMENT WITH ITS TERMS AND CONDITIONS.

Participating State: STATE OF HAWAII	Contractor: ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
Signature: 	Signature: 
Name: BONNIE KAHAKUI	Name: Stacy McEwan
Title: Administrator, SPO	Title: Associate Director - PS Contracts
Date: 05/28/2024	Date: 05/24/2024

APPROVED AS TO FORM:



05/28/2024

Deputy Attorney General

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Solomon Kingston
Telephone:	
Email:	skingston@naspo.org

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

to support documentation of participation and posting in appropriate data bases.]

AMENDMENT NO. 1
(hereinafter "Amendment No. 1")
for
NASPO VALUEPOINT CLOUD SOLUTIONS
MASTER AGREEMENT NO. AR2482
(hereinafter "Master Agreement")
Between
Environmental Systems Research Institute Inc.
(hereinafter "Contractor")
and
State of Hawaii
(hereinafter "Participating State")

This Amendment No. 1 amends the Participating Addendum as follows:

1. Point of Contact for the State of Hawaii.

Name: Matthew Chow
Address: State Procurement Office
1151 Punchbowl Street, Room 416
Honolulu, HI 98613
Telephone: (808) 586-0577
Fax: (808) 586-0570
Email: matthew.m.chow@hawaii.gov

2. Insurance

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his Subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by the Contractor or by Subcontractor or anyone directly or indirectly employed by either of them. If any Subcontractor is involved, the insurance policy or policies shall name the Subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a Subcontractor and naming the Subcontractor as additional insured, the Contractor may require the Subcontractor to provide its own insurance, which meets the requirements herein. It is understood that a Subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its Subcontractor(s) where appropriate.

Coverage

Limits

Commercial General Liability (occurrence form)	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per accident

Professional Liability	\$1,000,000 per claim
	\$2,000,000 aggregate

Professional Liability shall be required from Contractors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services etc.

Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential Information, unauthorized access/use of information, and identity theft) within limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate.

Each insurance policy required by this contract, including a Subcontractor's policy, shall contain the following clauses:

- A. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
- B. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the State of Hawaii.

The Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this Addendum and have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of the price/vendor list and price/vendor list extensions, if any, including those of its Subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default, entitling the State to exercise any or all of the remedies provided in the contract and this RFP for a default by the Contractor.

The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this RFP. Notwithstanding said policy or policies of insurance, the Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this price list.

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor: ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE INC.
Signature: 	Signature: 
Name: BONNIE KAHAKUI	Name: WILLIAM FLEMING
Title: Acting Administrator, SPO	Title: Director of Contracts & Legal
Date: 07/02/2021	Date: 06/24/2021

APPROVED AS TO FORM:



Deputy Attorney General

PARTICIPATING ADDENDUM

(hereinafter "Addendum")

For

NASPO VALUEPOINT CLOUD SOLUTIONS

MASTER AGREEMENT NO. AR2482

(hereinafter "Master Agreement")

Between

Environmental Systems Research Institute, Inc.

(hereinafter "Contractor")

and

State of Hawaii

(hereinafter "Participating State")

**State of Hawaii, State Procurement Office (SPO) Vendor List Contact No. 17-18 &
ESRI Agreement No. 319752.**

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number AR2482 with Environmental Systems Research Institute, Inc.

1. Scope:

This addendum covers NASPO ValuePoint Cloud Solutions lead by the State of Utah for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Changes:

A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

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

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

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

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

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

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

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

G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and

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

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

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

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

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

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

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

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

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

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

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

4. Licensing

Offerors(Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal(Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

5. Lease Agreements:

Leasing is not authorized by this Addendum

6. Primary Contact:

The primary contact individuals for this Addendum are as follows (or their named successors:

Participating State

Name: Stanton Mato
Address: State Procurement Office
1151 Punchbowl Street, Room 416
Honolulu, HI 96813
Telephone: (808) 586-0566
Fax: (808) 586-0570
E-Mail: stanton.d.mato@hawaii.gov

Contractor

Name: Jasmine Deo
Address: 380 New York Street, Redlands, CA 92373
Telephone: (909) 793-2853 x4309
Fax: (909) 307-3034
E-Mail: ideo@esri.com

7. Subcontractors:

Subcontractors are allowed under this Addendum.

8. Freight Charges:

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order

originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Vendor List Contract No. 17-18; the NASPO ValuePoint Master Agreement Number AR2482; ESRI Agreement No. 319752, and Purchase Orders shall include the ESRI Quotation/Proposal No.)

- Purchase Orders and Payments shall be made to Environmental Systems Research Institute, Inc. or authorized subcontractors, if any.

10. Participating Entity as Individual Customer:

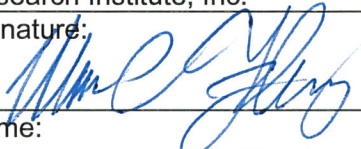
Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

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

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor: Environmental Systems Research Institute, Inc.
Signature: 	Signature: 
Name: SARAH ALLEN	Name: William C. Fleming
Title: Administrator, SPO	Title: Managing Business Attorney
Date: 10/11/17	Date: SEP 26 2017

APPROVED AS TO FORM:



Deputy Attorney General