

**FULLY EXECUTED**

Contract Number: 4400029666

Original Contract Effective Date: 04/23/2024

Valid From: 09/01/2024 To: 05/14/2025

All using Agencies of the Commonwealth, Participating Political
Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 172259**Supplier Name/Address:**

QUADIENT INC
478 WHEELERS FARMS RD
MILFORD CT 06461-9105 US

Supplier Phone Number: 203-301-3400**Supplier Fax Number:** 203-301-2600**Contract Name:**

Quadient NASPO Value Point MR

Purchasing Agent**Name:** Covell Daniel**Phone:** 717-346-3828**Fax:** 717 346-3820**Please Deliver To:**

To be determined at
the time of the Purchase Order
unless specified below.

Payment Terms

NET 30

Solicitation No.:

Issuance Date:

Supplier Bid or Proposal No. (if applicable):

Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
1	Mailroom Equipment & Software	0.000	Each	1.00	1	0.00
2	Mailroom Equipment Maintenance	0.000	Each	1.00	1	0.00
3	Postage Meter Rental	0.000	Each	1.00	1	0.00

General Requirements for all Items:**Header Text**

NASPO Value Point Agreement for Mailing Equipment , Supplies and Maintenance.

No further information for this Contract

Information:

Supplier's Signature _____

Printed Name _____

Title _____

Date _____

**PARTICIPATING ADDENDUM
TO THE
NASPO VALUEPOINT COOPERATIVE PURCHASING ORAGNIZATION
MAILING EQUIPMENT, SUPPLIES AND MAINTENANCE
CONTRACT NO. CTR058809**

This Participating Addendum (“Participating Addendum”) is entered into pursuant to the Mailing Equipment, Supplies and Maintenance Contract No. **CTR058809** (“Master Agreement”) between **Quadient** (“Contractor”) and the **State of Arizona** (“Arizona”) on behalf of the **NASPO ValuePoint Cooperative Purchasing Organization** (“NASPO ValuePoint”). The parties to this Participating Addendum hereby create a separate contract between the Contractor and the **Commonwealth of Pennsylvania** (“Commonwealth”), acting through the **Department of General Services** (“DGS” or “Participating State”).

WHEREAS, Arizona, on behalf of NASPO ValuePoint, entered into the Master Agreement with the Contractor, pursuant to which the Contractor provides mailing equipment, supplies, and maintenance as described in the Master Agreement;

WHEREAS, the Commonwealth desires to participate in the Master Agreement as a Participating State to procure mailing equipment and maintenance from the Contractor under the Master Agreement; and

WHEREAS, DGS is authorized under Sections 1902 and 1908 of the Commonwealth Procurement Code, 62 Pa. C. S. §§ 1902 and 1908, to undertake and make this type of contractual arrangement on behalf of the Commonwealth.

NOW, THEREFORE, intending to be legally bound hereby, DGS and the Contractor agree as follows:

1. **Master Agreement.** The Master Agreement, and all other documents attached thereto or incorporated by reference in the Master Agreement, is attached hereto as **Exhibit A** to this Participating Addendum. DGS and the Contractor agree that all Contractor terms included in the Master Agreement are specifically excluded from this Participating Addendum..
2. **Effective Date and Term.** This Participation Addendum shall become effective on the date the Commonwealth sends the fully executed and approved Participating Addendum to the Contractor (“Effective Date”). This Participating Addendum shall terminate or expire upon the earlier of (a) expiration or termination of the Master Agreement, or (b) termination of this Participating Addendum in accordance with its terms. If the Master Agreement is renewed or extended, this Participating Addendum shall automatically renew or extend for a term consistent with the term of the Master Agreement.
3. **Scope.** This Participating Addendum includes the mailroom equipment, maintenance and software available through the Master Agreement. Mailroom supplies are excluded from this Participating Addendum. Any scope exclusions specified herein apply only to this

Participating Addendum and shall not amend or affect other participating addendums or the Master Agreement itself.

4. **Additional Requirements.** DGS and Contractor shall be bound by the Additional Requirements, attached hereto as **Exhibit B** and made part of this Participating Addendum.
5. **Automatic Renewals.** Automatic renewals or extensions of rentals, leases, and services are not permitted.
6. **Participating Addendum Terms.** DGS and Contractor shall be bound by the Commonwealth of Pennsylvania Terms and Conditions, attached hereto as **Exhibit C** and made a part of this Participating Addendum.
7. **Master Agreement Terms.** DGS and Contractor shall be bound by the prices, terms, and conditions as stated in the Master Agreement (Exhibit A). The Contractor may adjust pricing in accordance with the terms of the NASPO contract.
8. **Additional Terms.**
 - a. **Embedded Software Licenses.** Any software included in the Supplies at the time of delivery (the "Embedded Software"), which includes any subsequent updates, patches or fixes, is licensed as part of the Supplies and not sold separately. Contractor hereby grants to the Commonwealth a non-exclusive, royalty-free, fully-paid, perpetual license to use the Embedded Software only in the operation of the Supply in which it was delivered. The Commonwealth shall not be required to accept and comply with any additional license agreement or terms (including, but not limited to any clickthrough, open source or freeware terms) for any Embedded Software, except as set forth in subsection b below.
 - b. **Commercially Available Software Licenses.** The Contractor may not offer Supplies that require commercially available software, which includes freeware and open-source software, for its use, unless and until the Commonwealth has entered into a software license agreement with the software licensor. The Contractor must inform any such software licensor that the software licensor must enter into a software license agreement with the Commonwealth with terms that are acceptable negotiated to the mutual agreement of the parties and referenced in the purchase document(s).
 - c. **Clickthrough License Terms.** No license terms and conditions (including, but not limited to, any terms of service, end-user licenses agreements) shall be binding or controlling and the terms and conditions of this Contract or any fully executed software license agreement shall govern any licenses provided for Commercially Available or Embedded Software. Any clickthrough terms and conditions that are included with any such software provided with the Supplies are null and void and not binding on the Commonwealth.
9. **TIPR.** Commonwealth Agencies are required to submit an IT Investment Request, in

accordance with ITP-BUS002 and RFD-BUS002B, and receive approval before purchasing any production level (high-volume) printing, finishing, mailing equipment or Software solutions that are intended for use in a printshop or mailroom environment, regardless of dollar value.

10. **Computing Services.** Commonwealth Agencies are required to submit a Cloud Use Case Review, as applicable pursuant to ITP_SEC040, and receive approval before purchasing any Computing Services.

11. **Software License Agreements.**

- a. DGS and the Contractor agree that all End-User Software License Agreements and Subscription Services Agreements included in the Master Agreement are specifically excluded from this Participating Addendum. The Commonwealth shall have an irrevocable and perpetual license, without accepting or agreeing to any End-User Software License Agreements, for Embedded Software. To the extent that End-User Software License Agreements (EULA) are required to use items and/or services from the Master Agreement, the Commonwealth shall enter into a separate agreement with the appropriate Licensor.
- b. Purchasing Entities other than the Commonwealth that acquire software shall be subject to the license agreements distributed with such software; however, in the event of a conflict in language between an EULA and the Master Agreement, the language in the Master Agreement will supersede and control. In addition, any language in a EULA which violates a Purchasing Entity's constitution, statute or other applicable law will be deemed void, and of no force or effect, as applied to the Purchasing Entity.
- c. Software subscription terms and Software license terms and conditions shall be mutually agreed upon in writing by the purchasing entity's authorized individual and Quadient, Inc. at the point of sale.

12. **Non-Commonwealth Hosting Template. Exhibit D,** Non-Commonwealth Hosted Applications-Services Template, applies only when the Commonwealth procures a Product or Service that meets the definition of Computing Services, as defined in Commonwealth [ITP_SEC040](#). The Parties will work in good faith to negotiate the terms of **Exhibit D**.

13. **Maintenance and Support.** Orders for maintenance/extended warranty services made during the term of the Participating Addendum may be extended up to three (3) years past the expiration date of the contract.

14. **Prepaid Postage Programs.** The Contractor is not authorized to create a prepaid postage program unless it is approved by DGS, Bureau of Publications. The Contractor shall not charge, and the Commonwealth shall not be responsible for, any fees or interest for any prepaid postage program created. The Commonwealth shall only be responsible for the amount prepaid.

15. **COSTARS Program.** COSTARS Program members shall be eligible to utilize this Participating Addendum under the same terms and conditions as the Commonwealth. Information related to the COSTARS Program is incorporated in the COSTARS Program Clause contained in Section I.9 IFB-027.1 of Exhibit D. If the Contractor elects to permit COSTARS members to participate in the Contract, the Contractor shall complete and return the COSTARS Election to Participate Form, which is attached hereto as **Appendix A**.
16. **Iran Free Procurement Certifications and Disclosure.** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a Contractor must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Commonwealth Procurement Code and is eligible to contract with the Commonwealth under Sections 3501—3506 of the Commonwealth Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). The Contractor must complete and return the Iran Free Procurement Certification form, which is attached hereto as **Appendix B** and made part of this Participating Addendum.
- See the following web page for current Iran Free Procurement list:
<https://www.dgs.pa.gov/Documents/Procurement%20Forms/ProposedIranFreeProcurementList.pdf>.
17. **Worker Protection and Investment Certification.** Pursuant to Executive Order [2021-06](#), Worker Protection and Investment (October 21, 2021), the Commonwealth is responsible for ensuring that every Pennsylvania worker has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with all applicable Pennsylvania state labor and workforce safety laws. Such certification shall be made through the Worker Protection and Investment Certification Form (BOP-2201), **Appendix C**, which is attached hereto and made a part of this Participating Addendum.
18. **Lobbying Certifications and Disclosure.** With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. The Contractor must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this Participating Addendum as **Appendix D**. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.
19. **Order of Precedence.** To the extent that there is a conflict between the contract documents, the order of precedence shall be:
- a. The Participating Addendum contained herein.
 - b. The Additional Requirements (Exhibit B).

- c. The Commonwealth of Pennsylvania Terms and Conditions (Exhibit C).
- d. The Non-Commonwealth Hosting Template (Exhibit D).
- e. The Master Agreement (Exhibit A).

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IN WITNESS WHEREOF, the parties have signed this Participating Addendum.

CONTRACTOR:

John Tartaro Feb 15, 2024
Signature

John Tartaro, Deputy CFO
Printed Name and Title

172259
SAP Number

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

By: To be obtained electronically
Deputy Secretary for Procurement Date

PENNSYLVANIA DEPARTMENT OF TREASURY:

To be obtained electronically
Treasurer (or Designee) Date

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of General Counsel Date

To be obtained electronically
Office of Attorney General Date

	Contract Amendment		Arizona Department of Administration State Procurement Office Phoenix, AZ 85007
	Contract #: CTR058809	Contract Amendment: Two (2)	
	Effective Date: 5/15/2024		

NASPO Mailing Equipment, Supplies and Maintenance

Quadient, Inc.

The purpose of this amendment is to extend the contract, and add on additional items.

In accordance with Section 6: NASPO Valuepoint Master Agreement Terms and Conditions, the following items have been amended:

- Pursuant to Section II, Term of Master Agreement, Section 2.1, Initial Term, the contract is hereby extended from May 15, 2024 to May 14, 2025.

In accordance with Section 3: Scope of Work, Section 3.6, Technology Advancements, the equipment and technologies below have been added and deleted from the price book, these revisions are noted on attachment "NASPO CTR05889_revised 12-13-23". The equipment that has been added is available for purchase immediately.

Items Added to Price book:

Categories	Product Line	Part #	Description
Additional Services	S.M.A.R.T iX-Series Bundle Pkgs	SMARTCMCS	S.M.A.R.T. MailCenter Multi-Carrier Support for up to 5 locations.
Additional Services	S.M.A.R.T iX-Series Bundle Pkgs	SMARTMULTI-RM-CONF	S.M.A.R.T. Remote Install for Multi-Site Applications. One per location
Additional Services	S.M.A.R.T iX-Series Bundle Pkgs	SMART-SO	S.M.A.R.T. Software for Existing iX-Series Machines Only
Additional Services	S.M.A.R.T iX-Series Bundle Pkgs	SMART-SSO	S.M.A.R.T. Single Sign On Activation that Requires SAML 2.0
Additional Services	S.M.A.R.T iX-Series Bundle Pkgs	SMRTSSO-REMCN	S.M.A.R.T. SSO Remote Configuration Training (MUST BE ORDERED WITH SMART-SSO)
Folder-Inserters, Production	DS12G4	DATAPACSITEINSTALL	Onsite Install - DataPac
Folder-Inserters, Production	DS12G4	DS12FLDR-NBR	G4i Folder W/RISO Rollers
Folder-Inserters, Production	DS12G4	DS12FMFDRFDR	Flats Module Feeder Folder
Folder-Inserters, Production	DS12G4	DS12FMFDRFDRFD	Flats Module Feeder Folder Bottom Reading
Folder-Inserters, Production	DS12G4	DS12FMFDRFDRFU	Flats Module Feeder Folder Top Reading
Folder-Inserters, Production	DS12G4	DS12G4IL2IX9	iX-9 Meter Rental Base Only
Folder-Inserters, Production	DS12G4	DS12IX9DEPINTRFACE	DS-1200 Interface to DEP (iX-9)
Folder-Inserters, Production	DS12G4	DS12IX9INTRFACE	DS-1200 Interface to iX-9
Folder-Inserters, Production	DS12G4	DS180I1ST	1 HCDF Tower, Accumulate & Divert, Conveyor, Furniture and AIMS On Board

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Impress Automate ON-PREM	Impress Automate ON-PREM	IMP-CHART-PI	Plugin utilizes data from document to create Bar charts and places them on the page at specified location
Impress Automate ON-PREM	Impress Automate ON-PREM	IMP-EXCHANGE-PI	Plugin utilizes Exchange web services to send emails from Automate
Impress Automate ON-PREM	Impress Automate ON-PREM	IMP-NUP-PI	Performs N-up on output pdf via Remote action
Impress Automate ON-PREM		IMP-SEQ-PI	Places a sequencing number in the address block and a 2D barcode on first page.
Mailing Furniture	Parcel Locker Solutions	CQ-A0126638	HE Door Control Board Power Cable 9M, 30 Foot Cable (Needed for long cable run due to starter split)
Mailing Furniture	Parcel Locker Solutions	CQ-A0126639	HE Door Control Board Power Cable 15M, 50 Foot Cable (Needed for long cable run due to starter split)
Mailing Furniture	Parcel Locker Solutions	CQ-A0138796	CQ D Outdoor Side Anchoring 2 Per Configuration Double Tower (1 Required for each exposed side (2 for straight line, 6 for horseshoe, 4 for L)
Mailing Furniture	Parcel Locker Solutions	CQ-A0138801	HE Outdoor Rear Anchoring 1 Per Tower (1 Per Outdoor Tower (both starters and adders)
Mailing Furniture	Parcel Locker Solutions	CQ-A0138802	HE Outdoor Rear Anchoring 1 Per Single Tower (1 per outdoor S13)
Mailing Furniture	Parcel Locker Solutions	CQ-ART-TEMPLATE	CQ Parcel Pending Lockers Decal Art Template
Mailing Furniture	Parcel Locker Solutions	CQ-AWNINGWRAP	CQ Parcel Pending Lockers Decal Wrap
Mailing Furniture	Parcel Locker Solutions	CQ-LKRCUSTSCRN1	CQ Parcel Pending One Time Setup Cost for Custom Locker Screens. 1-3 Control Units
Mailing Furniture	Parcel Locker Solutions	CQ-LKRCUSTSCRN4	CQ Parcel Pending One Time Setup Cost for Custom Locker Screens. 4-7 Control Units
Mailing Furniture	Parcel Locker Solutions	CQ-LKRCUSTSCRN8	CQ Parcel Pending One Time Setup Cost for Custom Locker Screens. 8+ Control Units
Mailing Furniture	Parcel Locker Solutions	CQ-LSUB-CUSTSCRN	CQ Parcel Pending Locker Monthly Subscription to Maintain Customization of Locker Screens
Mailing Furniture	Parcel Locker Solutions	CQ-LSUB-INTGRTION	CQ Parcel Pending Locker Monthly Subscription to Integrate with our 3rd Party Partners
Mailing Furniture	Parcel Locker Solutions	HE-ART-TEMPLATE	HE Parcel Pending Lockers Decal Art Template
Mailing Furniture	Parcel Locker Solutions	HE-AWNINGWRAP	HE Parcel Pending Lockers Decal Wrap
Mailing Furniture	Parcel Locker Solutions	HE-LKRCUSTSCRN1	HE Parcel Pending One Time Setup Cost for Custom Locker Screens. 1-3 Control Units
Mailing Furniture	Parcel Locker Solutions	HE-LKRCUSTSCRN4	HE Parcel Pending One Time Setup Cost for Custom Locker Screens. 4-7 Control Units
Mailing Furniture	Parcel Locker Solutions	HE-LKRCUSTSCRN8	HE Parcel Pending One Time Setup Cost for Custom Locker Screens. 8+ Control Units
Mailing Furniture	Parcel Locker Solutions	HE-LSUB-CUSTSCRN	HE Parcel Pending Locker Monthly Subscription to Maintain Customization of Locker Screens

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Mailing Furniture	Parcel Locker Solutions	HE-LSUB-INTGRTION	HE Parcel Pending Locker Monthly Subscription to Integrate with our 3rd Party Partners
Mailing Systems, Med Volume	iX Mailing System	CELLKIT	Wireless cell router and SIM. One router required per mailing system
Mailing Systems, Med Volume	iX Mailing System	CELLKIT-UPG	Cell upgrade for existing customers. Wireless cell router and SIM. One router required per mailing system
Mailing Systems, Med Volume	Supplies	CERT890-QDT50	Label 890 Certified Mail. For use with SP35 App (E-Services w/Electronic Return Receipt) 50 per pack. Supports All iX/IN/IS-Series Mailing Systems
Mailing Systems, Med Volume	Supplies	SIGN889-QDT50	Label 889 Signature Tracking. For use with SP35 App (E-Services w/Electronic Return Receipt) 50 per pack. Supports All iX/IN/IS-Series Mailing Systems
Mailing Systems, Med Volume	Supplies	TRACK888-QDT50	Label 888 USPS Tracking. For use with SP35 App (E-Services w/Electronic Return Receipt) 50 per pack. Supports All iX, IN and IS-Series Mailing Systems
S.M.A.R.T. iX PACKAGES	iX Mailing System	SMARTESSENTIAL-IX3	S.M.A.R.T. Essential Subscription for iX-3 Mailing System
S.M.A.R.T. iX PACKAGES	iX Mailing System	SMARTESSENTIAL-IX5	S.M.A.R.T. Essential Subscription for iX-5HF/AF Mailing System
S.M.A.R.T. iX PACKAGES	iX Mailing System	SMARTESSENTIAL-IX7	S.M.A.R.T. Essential Subscription for iX-7 & iX-7PRO Mailing System
S.M.A.R.T. iX PACKAGES	iX Mailing System	SMARTESSENTIAL-IX9	S.M.A.R.T. Essential Subscription for iX-9 Mailing System
Software, License & Subscription	Impress Automate ON-PREM	IMP-ATTRATTACH-PI	Plugin copies existing file to input fldr of automate via provided parameter. Returns file process results. Status Codes, Filename used, File size, processing time
Software, License & Subscription	Impress Automate ON-PREM	IMP-ATTRCOMBINE-PI	Attribute plugin that will combine multiple attributes into one attribute to be use for representation of all attributes contained in a set
Software, License & Subscription	Impress Automate ON-PREM	IMP-BUND-CSV ADD	2023 AppPack Bundle config for CSV Input
Software, License & Subscription	WTS-P	WTSTC53	WTS Zebra TC53 Scanner w/Camera. Has Ethernet & Wi-Fi capability. Product requires a power supply & a mobile software subscription.
Software, License & Subscription	WTS-P	WTSTC-5358-5SLCRAD	WTS TC53/58 5-Port Charging Cradle. Cradle charges scanners with or without protective boot. Ethernet. Cradle - 5 Slot 5D Ethernet
Software, License & Subscription	WTS-P	WTSTC-5358BATT	WTS TC53/58 4400 mAh Battery
Software, License & Subscription	WTS-P	WTSTC-5358BOOT	WTS TC53/58 Protective Boot
Software, License & Subscription	WTS-P	WTSTC-5358CRADLE	WTS TC53/58 Single USB Cradle, 1 Slot 1D1B Charge
Software, License & Subscription	WTS-P	WTSTC-5358CUPSHIMS	WTS TC53/58 Cradle Cup Replacement + 2
Software, License & Subscription	WTS-P	WTSTC-5358ETHCRAD	WTS TC53/58 SingleEthernet Cradle, 1 Slot 1D1B Ethernet
Software, License & Subscription	WTS-P	WTSTC-5358EXBATT	WTS TC53/58 6600 mAh Battery
Software, License & Subscription	WTS-P	WTSTC-5358HOL	WTS TC53/58 Soft Holster



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State Procurement Office
Phoenix, AZ 85007

Software, License & Subscription	WTS-P	WTSTC53KIT	WTS Zebra TC53 Scan w/camera, USB charging cradle (no ethernet), protective boot. If Ethernet cradle required must purchase handheld & accessories.
Software, License & Subscription	WTS-P	WTSTC58	WTS Zebra TC58 Scanner w/Camera. Has Ethernet, Wi-Fi, & cellular (CDMA and GSM) capabilities. Product requires PWR supply & mobile SW subscription
Software, License & Subscription	WTS-P	WTSTC58KIT	WTS Zebra TC58 Cellular Scan w/camera, USB charging cradle (no ethernet), protective boot. Ethernet cradle req'd, must purchase handheld & accessories
Software, License & Subscription	Supplies	ENV02B5M	#10 Double Window Security Envelope - 5,000 qty
Software, License & Subscription	Supplies	ENV105M	#10 Reverse Flap Double Window Security Envelope - 5,000 qty
Software, License & Subscription	Supplies	ENV10DWCM	#10 Double Window Certified Envelope - 500 per box - Used w/iX-Mailing Systems
Software, License & Subscription	Supplies	ENV10NWP	#10 Non Window, Plain No Imprint, 500 per box
Software, License & Subscription	Supplies	ENV10SWCM	#10 Single Window, Green Imprint with "Certified Mail", 500 per box
Software, License & Subscription	Supplies	ENV10SWP	#10 Single Window, Plain No Imprint, Standard Window Lower Left, 500 per box
Software, License & Subscription	Supplies	ENV6X95DWCM	6 x 9.5 Double Window Certified Envelope - 500 per box - Used w/iX-Mailing Systems
Software, License & Subscription	Supplies	ENV6X95NWP	6 x 9.5 Non Window, Plain No Imprint, Booklet Style, 500 per box

Items Deleted from Price book:

Categories	Product Line	Part #	Description
Mailing Systems, Med Volume	Supplies	80100053	Professional Customer Roller-Care Kit (2), 25 lint-free cloths, 4 pr gloves MM, F/I & AS (except IJ-25/35/45, IJ-40/50/60, DS-100/140, DS-160, DS-200, DS-1200, DS-1000 & SI-60)
Mailing Systems, Med Volume	Supplies	80100054	Dust-A-Way, 10 oz. can all
Mailing Systems, Med Volume	Supplies	80100069	Hand Cleaning Pads - 50 per jar all
Mailing Systems, Med Volume	Supplies	80100110	Lint-Free Cloths - 50 per pack all
Mailing Systems, Med Volume	Supplies	8704937K	e-Certified Mail Labels, 100 per pack. IS-330, IS-350, IS-420, IS-430, IS-440, IS-460, IS-480, IS-490, IJ-70-80-90-110, IN Series 360/600/700/750, iX-3/5/7/7PRO & iX-9
Mailing Systems, Med Volume	Supplies	8704938L	e-Delivery Confirmation Label, 100 per pack. IS-330, IS-350, IS-420, IS-430, IS-440, IS-460, IS-480, IS-490, IJ-70-80-90-110, IN Series 360/600/700/750, iX-3/5/7/7PRO & iX-9
Mailing Systems, Med Volume	Supplies	8704939M	e-Signature Confirmation Label, 100 per pack. IS-330, IS-350, IS-420, IS-430, IS-440, IS-460, IS-480, IS-490, IJ-70-80-90-110, IN Series 360/600/700/750, iX-3/5/7/7PRO & iX-9



Contract Amendment

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Folder-Inserters, Low, Med, High	DH Intelligent Inserters	DS180IBCRMKIT	AIMS Bar Code Scanner Monitor Mount
Software, License & Subscription	Supplies	DWECERT10	10 Dbl Window Certified Env
Envelope Addressing System	Addressing	HD-M12DN	49 PPM Monochrome HD Office Printer Certified For Use With AIMS/OMS500
Additional Services	Impress Automate ON-PREM	IDA-PM-FIXED	Project Management Fixed Rate Unit (Unit Quantity Based on Estimator Quote)
Additional Services	Impress Automate ON-PREM	IDA-PM-HOURLY	Project Management Hourly Rate (BHC Only)
Additional Services	Impress Automate ON-PREM	IDA-PS-FIXED	Professional Services Fixed Rate Unit (Unit Quantity Based on Estimator Quote)
Additional Services	Impress Automate ON-PREM	IDA-PS-HOURLY	Professional Services Hourly Rate (BHC Only)
Mailing Systems, Med Volume	Supplies	M1100DK	HD-M11/MF14 Drum
Mailing Systems, Med Volume	Supplies	M1100TK	HD-M11dn Toner Cartridge - 10K
Mailing Systems, Med Volume	Supplies	MF1400TK	HD-MF14dn Toner Cartridge - 12K
Additional Services	DS12G4	DPINSTALL	Data-Pac install and service training. REQUIRED for first install in market area.
Mailing Furniture	Parcel Locker Solutions	CQ-A0134637	CQ Parcel Pending Ethernet Cable 75
Mailing Furniture	Parcel Locker Solutions	CQ-D1-IO-ADDER-JB	CQ D1 Adder InOut Hybrid. Jet Black D1 Indoor/Outdoor Locker
Mailing Furniture	Parcel Locker Solutions	CQ-D4-IO-ADDER-JB	CQ D4 Adder InOut Hybrid. Jet Black D4 Indoor/Outdoor Locker
Mailing Furniture	Parcel Locker Solutions	CQ-OUTADDER-D1	CQ PP Outdoor Adder 1 Double Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	CQ-OUTADDER-D18	CQ PP Outdoor Adder 18 Double Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	CQ-OUTADDER-S6	CQ PP Outdoor Adder 6 Single Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	CQ-S6-IO-ADDER-JB	CQ S6 Adder InOut Hybrid. Jet Black S6 Indoor/Outdoor Locker
Mailing Furniture	Parcel Locker Solutions	CQ-STARTER-CRD13JB	CQ PP Starter 13 Double Tower Jet Black with CR
Mailing Furniture	Parcel Locker Solutions	CQ-STARTER-CRD6JB	CQ PP Starter 6 Double Tower Jet Black with CR
Mailing Furniture	Parcel Locker Solutions	HE-A0134637	HE Parcel Pending Ethernet cable 75
Mailing Furniture	Parcel Locker Solutions	HE-OUTADDER-D1	HE PP Outdoor Adder 1 Double Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	HE-OUTADDER-D18	HE PP Outdoor Adder 18 Double Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	HE-OUTADDER-D4	HE PP Outdoor Adder 4 Double Tower Stone Gray
Mailing Furniture	Parcel Locker Solutions	HE-OUTADDER-S6	HE PP Outdoor Adder 6 Single Tower Stone Gray

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John Tartaro
Signature

Deputy, CFO
Title

12/19/2023
Date

Francine Whittington
Signature

Statewide Procurement Manager
Title

12/18/23
Date

ALL OTHER REQUIREMENTS, SPECIFICATIONS, TERMS AND CONDITIONS REMAIN UNCHANGED

	Contract Amendment		Arizona Department of Administration State Procurement Office 100 N. 15th Avenue Phoenix, AZ 85007
	Contract #: CTR058809	Contract Amendment: One (1)	
	Effective Date: 5/15/2022		

NASPO Mailing Equipment, Supplies, and Maintenance
Quadient, Inc.

In accordance with the NASPO Valuepoint Master Agreement Terms and Conditions, Section 2.2, Amendment Limitations, this contract is amended as follows:

II. Term of Master Agreement, Section 2.1, Initial Term has been revised as follows:

*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.*

John Tartaro

Signature

Deputy CFO

Title

Oct 13, 2023

Date

Francine Whittington

Signature

LEAD Contract Administrator

Title

10/13/2023

Date



The State of Arizona
State Procurement Office

In conjunction with



**NASPO ValuePoint Master Agreement for
Mailing Equipment, Supplies and
Maintenance**

(Effective May 15, 2022)

Resulting from Request for Proposals
Arizona Solicitation Number BPM003137



Request for Proposal

Solicitation No. **BPM003137**

Description:
Mailing Equipment, Supplies, and Maintenance

Arizona Department of Administration

State Procurement Office

100 N 15th Ave., Suite 402
Phoenix, AZ 85007

Attachment 1 Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide Mailing Equipment, Supplies, and Maintenance in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	1.	9/1/2021	☒						
	Date		initial						
Revised Offers:	2.	☒	☒	3.	☒	☒	4.	☒	☒
	date #1		initial	date #1		initial	date #1		initial
	5.	☒	☒	6.	☒	☒	7.	☒	☒
	date #4		initial	date #5		initial	date #6		initial
Best and Final Offer:	8.	☒	☒						
	Date		initial						

Quadient, Inc.

Offeror company name

478 Wheelers Farms Rd.

Address

Milford, CT 06461

City | State | ZIP

94-2388882

Federal tax identifier (EIN or SSN)

☒

Signature of person authorized to sign Offer

John Tartaro Deputy, CFO

Printed name and title

Larry Waters Manager Government Accounts

Contact name and title

l.waters@quadient.com

Contact Email Address

281-216-4596

Contact phone number

CERTIFICATION: By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. §§ 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; and
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by the latest date and number at the top of this form (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from Procurement Officer.

State's Contract No. is: **CTR058809**

The effective date of the Contract is: **5/15/2022**
Date

Contract awarded **1/25/2022**
Date

Nyesha Daley
Procurement Officer Signature

Nyesha Daley, PhD
Procurement Officer Printed Name



Request for Proposal

Solicitation No. **BPM003137**

Description:
Mailing Equipment, Supplies, and Maintenance

Arizona Department of Administration

State Procurement Office

100 N 15th Ave., Suite 402
Phoenix, AZ 85007

Attachment 3-A Method Proposal (Method of Approach)

The Offeror shall provide a narrative response to each question that demonstrates their understanding of the Scope of Work requirements and describes your company's overall method of approach for providing the service stated in this solicitation. If there is a question that is not applicable to the services required by the Scope of Work, you may mark it N/A.

Question 1: Proposed Offering:

Bidder shall identify which categories are being offered.

☒	<u>Postage Meter Rental (to include Legacy Postage Meters)</u>
☒	<u>Mailing Systems, Ultra Low Volume</u>
☒	<u>Mailing Equipment, Mailing Systems, Low Volume</u>
☒	<u>Mailing Equipment, Mailing Systems, Medium Volume</u>
☒	<u>Mailing Systems, High Volume</u>
☒	<u>Mailing System, Production</u>
☒	<u>Integrated Postal Scales</u>
☒	<u>Letter Openers, Low Volume</u>
☒	<u>Letter Openers, High Volume</u>
☒	<u>Letter Folders, Low Volume</u>
☒	<u>Letter Folders, High Volume</u>
	<u>Inserters, Production</u>
☒	<u>Folder/Inserters, Low volume</u>
☒	<u>Folders/Inserters, Medium Volume</u>
☒	<u>Folders/Inserters, High Volume</u>
☒	<u>Folders/Inserters, Production</u>
	<u>Envelope Mail Labeler, Low Volume</u>
	<u>Envelope Mail Labeler, Medium Volume</u>
	<u>Envelope Mail Labeler, High Volume</u>
	<u>Envelope Mail Labeler, Production</u>
☒	<u>Envelope Addressing System, Ink Jet, Low Volume</u>
☒	<u>Envelope Addressing System, Ink Jet, Medium Volume</u>
☒	<u>Envelope Addressing System, Ink Jet, High Volume</u>
☒	<u>Envelope Addressing System, Ink Jet, Production</u>
☒	<u>Tabbers, Low Volume</u>
☒	<u>Tabbers, Medium Volume</u>
☒	<u>Tabbers, High Volume</u>
	<u>Tabbers, Production</u>
	<u>Check Imprinting/Endorsing</u>
☒	<u>Pressure Sealing, Production</u>
	<u>Bursting Equipment, Production</u>
☒	<u>Pre-sorting Equipment, Production</u>
☒	<u>Extractors</u>
☒	<u>Mailing Furniture (general)</u>
☒	<u>Software, License and Subscription</u>
☒	<u>Software Integration</u>

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REQUEST FOR PROPOSAL

Mailing Equipment, Supplies and Maintenance

Solicitation # BPM003137

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Arizona, State Procurement Office (“Lead State”) is requesting proposals for Mailing Equipment, Supplies and Maintenance in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish multiple Master Agreements, by category with qualified Offerors to provide Mailing Equipment, Supplies and Maintenance to meet the mailing needs for all Participating States.

The objective of this RFP is to leverage the collective volume of potential purchases by numerous state and local government entities to obtain best value, and achieve more favorable pricing than is obtainable by an individual state or local government entity. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (e.g., 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 state procurement director and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be two (2) years with renewal provisions as outlined in Section 6, NASPO ValuePoint Program Provisions, 3. Term of the Master Agreement NASPO ValuePoint Master Terms and conditions.

It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, in the Lead State’s discretion.

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

This RFP is a replacement for the expiring Mailroom Equipment, Supplies and Maintenance Master Agreements for the State of Arizona and NASPO ValuePoint.

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

The State of Arizona, State Procurement Office is the Lead State and issuing office for this document and all subsequent Amendments relating to it. This solicitation (RFP) is a competitive process, in accordance with the Arizona Procurement Code available at <https://spo.az.gov/>. The Arizona Procurement Code is a compilation in one place of

Arizona Revised Statutes (ARS) 41-2501 et seq. and administrative rules and regulations A.A.C. R2-7-1010 et seq. The solicitation # BPM003137 must be referred to on all proposals, correspondence, and documentation relating to this RFP.

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

Nyesha Daley, PhD, Statewide Procurement Manager
State of Arizona, State Procurement Office
100 N. 15th Avenue
Phoenix, Arizona 85007
Email: nyesha.daley@azdoa.gov
Phone: 602-542-4907

1.3 Schedule of Events

All dates and times are listed in the State's e-procurement system

Solicitation Release:	July 6, 2021
Pre-Proposal Conference:	July 19, 2021
Closing Date and Time:	August 17, 2021
Anticipated Award Date:	November 1, 2021

All times are Mountain Standard time unless indicated otherwise.

1.4. Definitions of Terms

The following definitions apply to this solicitation. Section 6 also contains definitions of terms used in this solicitation and the NASPO ValuePoint Master Agreement terms and conditions.

- | | |
|---|--|
| 1.1 Arizona Procurement Code;
A.R.S.;
A.A.C. | "Arizona Procurement Code" means, collectively, Title 41 Chapter 23, <i>et. sequitur</i> , in the Arizona Revised Statutes (abbreviated "A.R.S.") and administrative rules R2-7-101 <i>et. sequitur</i> in the Arizona Administrative Code (abbreviated "A.A.C.").

NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation Documents, |
|---|--|

therefore, you will need to be familiar with its provisions to be able to understand the Solicitation Documents fully.

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

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

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

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

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

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

1.2 Clarifications

“Clarifications” means, per A.A.C. R2-7-C313, communications between the Procurement Officer and Offeror for the purpose of providing a greater mutual understanding of the Offer. Clarifications may include demonstrations, questions and answers, or elaborations on previously-submitted information.

1.3 Contract

“Contract” is defined in paragraph 1.2 of the Uniform Terms and Conditions.

1.4 Contract Amendment

“Contract Amendment” is defined in paragraph 1.3 of the Uniform Terms and Conditions.

1.5 Contract Terms and Conditions

“Contract Terms and Conditions” is defined in paragraph 1.8 of the Special Terms and Conditions.

1.6 Contractor

“Contractor” is defined in paragraph 1.4 of the Uniform Terms and Conditions.

1.7 Evaluation

“Evaluation” means, per A.A.C. R2-7-C316, the process whereby the Procurement Officer will determine which Responsive offers, revised offers, and best and final offers are the most advantageous to State taking into consideration the evaluation factors set forth in the Solicitation Documents.

1.8 Negotiation

“Negotiation” means, per A.A.C. R2-7-101(32), an exchange or series of exchanges between State and an offeror for the purposes set forth in A.A.C. R2-7-C314.

1.9 Not Susceptible for Award	“Not Susceptible for Award” means, per A.A.C. R2-7-C311, that the relevant offer has been determined by the Procurement Officer to fail one or more of the tests and comparisons set forth therein. NOTE: A determination of Not Susceptible for Award and a determination of Responsive are mutually exclusive.
1.10 Offer: Initial Offer; Revised Offer; Best and Final Offer (BAFO)	“Initial Offer” means, per A.A.C. R2-7-101(33), Offeror’s proposal submitted to State in response to the Solicitation, as initially submitted. “Revised Offer” means any revised versions of the Initial Offer that Offeror has submitted to State at State’s request as permitted under A.A.C. R2-7-C314 and R2-7-C315. “Best and Final Offer” (“BAFO”) means, per A.A.C. R2-7-101(8), the Revised Offer submitted after negotiations have been completed that contain Offeror’s most favorable terms for price, service, and products to be delivered. Reference to “an Offer, “the Offer,” or “your Offer” means any of the Initial Offer, a Revised Offer, or the Best and Final Offer.
1.11 Offeror	“Offeror” is the Person submitting an Offer; instructions addressed to “you” and references to “your” items are to be construed as being synonymous with “Offeror” and “Offeror’s” throughout these Instructions to Offerors.
1.12 Pricing Document	“Pricing Document” means <u>Section 2-B</u> of the Solicitation Documents. Also known as Pricing Document as defined in the <u>Special Terms and Conditions</u>.
1.13 The State’s e-Procurement System	“The State’s e-Procurement System” is defined in paragraph 1.16 of the <u>Special Terms and Conditions</u>.
1.14 Procurement Officer	“Procurement Officer” means the person, or his or her designee, who has been duly authorized by State to administer the Solicitation and make written determinations with respect to the Solicitation. The Procurement Officer is identified in The State’s e-Procurement System.
1.15 Small Business	“Small Business” means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
1.16 Solicitation	“Solicitation” means this procurement solicitation, which State is issuing as either:

1. an invitation for bids ("IFB") under A.R.S. § 41-2533;
2. a request for proposals ("RFP") under A.R.S. § 41-2534;
3. a request for quotations ("RFQ") under A.R.S. § 41-2535;
or
4. a request for qualifications under A.R.S. §41-2558.

Refer to the Solicitation Summary for which of the foregoing is this Solicitation.

1.17 Solicitation Amendment	"Solicitation Amendment" means, per A.A.C. R2-7-101(15), a change to the Solicitation that has been issued by Procurement Officer.
1.18 Solicitation Summary	"Solicitation Summary" means <u>Section 1</u> of the Solicitation Documents.
1.19 State	"State" is defined in paragraph 1.11 of the <u>Uniform Terms and Conditions</u> .
1.20 Subcontract	"Subcontract" is defined in paragraph 1.13 of the <u>Uniform Terms and Conditions</u> .
1.21 Subcontractor	"Subcontractor" is defined in paragraph 1.19 of the <u>Special Terms and Conditions</u> .

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

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

Proposer has the same meaning as Offeror

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

"Request for Proposals" or "RFP" or "Solicitation" means the entire solicitation document, including all parts, sections, exhibits, attachments, and Amendments.

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org and www.naspo.org.

1.6. Participating States

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

- California
- Hawaii
- Illinois
- Iowa
- Maryland
- Ohio
- Tennessee
- Texas
- Virginia
- Washington
- Wyoming

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

1.7. Anticipated Usage

No minimum or maximum level of sales volume is guaranteed or implied.

Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1. Pre-Offer Conference

A Pre-Offer Conference will be held at the time and place indicated in the solicitation's "Pre-Bid Conference" field as found within the State of Arizona's e-procurement system APP (<https://app.az.gov>); attendance is not required. The purpose of this conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the State of Arizona's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the State of Arizona at the conference. The State of Arizona will then determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, or this document in an alternative format, by contacting the State of Arizona's Procurement Office listed on page 3. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

2.2. Inquiries

2.2.1 Solicitation Contact Person. Any inquiry related to this Solicitation, including any requests for inquiries regarding standards referenced in the Solicitation, shall be directed solely to the State of Arizona's Procurement Officer.

2.2.2 Submission of Inquiries. All inquiries to the State of Arizona's Procurement Officer related to the Solicitation are required to be submitted in the State of Arizona's E-Procurement System, APP (<https://app.az.gov>). All interested Proposers shall utilize the Q&A functionality provided through APP (<https://app.az.gov>). All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number.

2.2.3 Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.

2.2.4 Timeliness. Any inquiry or exception to the Solicitation shall be submitted as soon as possible and should be submitted at least seven days before the offer due date and time for review and determination by the State of Arizona. Failure to do so may result in the inquiry not being considered for a solicitation amendment.

2.2.5 No Right to Rely on Verbal or Electronic Mail Responses. An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.

2.3. Preparation of Proposals

2.3.1 Electronic Documents. This solicitation document is provided in an electronic format. Any unidentified alteration or modification to any solicitation documents, to any attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. In those instances, where modifications are identified, the original document published by the State of Arizona shall take precedence.

2.3.2 Attachment Formats. All attachments shall be submitted in a format acceptable to the Lead State. Acceptable formats include .doc (Microsoft Word document), .xls (Microsoft Excel spreadsheet), and .pdf (Adobe Acrobat portable document format). Prospective Offerors that wish to submit attachments in other formats shall submit an inquiry to the Procurement Officer.

2.3.3 Confidential, Protected or Proprietary Information

All information identified in the “Confidential” section shall be subject to review by the Lead State in accordance with the procedures prescribed by the Lead State’s open records statute, freedom of information act, or similar law.

2331 If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains a trade secret or other proprietary information that should be withheld, the Offeror shall clearly designate the trade secret and other proprietary information, using the term “Confidential” and, the State of Arizona’s Procurement Officer shall be so advised in writing. An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. Such material shall be identified as “Confidential” wherever it appears. Until a written determination is made, the State of Arizona’s Procurement Officer shall not disclose information designated as “Confidential” except to those individuals deemed to have a legitimate State interest. In the event the State of Arizona’s Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State of Arizona’s Procurement Administrator within the time specified in the written determination. The State of Arizona, pursuant to A.A.C. R2-7-103, shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person, requests a review of that determination under A.A.C. R2-7-103(D). **Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.**

2332 All Confidential, Protected or Proprietary information must be included in one section of your response. **Do not incorporate**

Confidential, Protected or Proprietary information throughout the Proposal.

- 2.3.3.2.1 In the event that a limited amount of “Confidential, Protected or Proprietary” information is deemed necessary by the Offeror to respond to solicitation, any such information must be included in **a separate section** of the Offeror’s proposal response which is clearly marked as “Confidential”. In addition, provide a reference in the proposal response directing reader to the specific area of this protected information section.
- 2.3.3.2.2 Offerors should be aware that marking any portion of an Offer as “Confidential”, may exclude the Offer from evaluation or consideration for award.
- 2.3.3.2.3 Elements of the proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as “Confidential”. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information may be rejected.
- 2.3.3.2.4 Information included in the “Confidential” section of an Offeror’s proposal is not automatically accepted and protected.

2.3.4 Exceptions to Terms and Conditions.

All exceptions included with the Offer shall be submitted in the State of Arizona’s eProcurement system in the Conformance Statements included in Part 3 of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the State of Arizona’s Procurement Officer in a written statement. An Offeror shall provide a statement detailing a justification for each exception item request. The Offeror’s preprinted or standard terms will not be considered by the State of Arizona as part of any resulting Contract. **All exceptions that are contained in the Offer may negatively impact an Offeror’s susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.**

2.3.5 Evidence of Intent to be Bound.

The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State of Arizona's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. The Offer and Acceptance Form shall be submitted electronically with the submitted Offer no later than the Offer due date and time. Failure to return an Offer and Acceptance Form will result in rejection of the offer.

2.3.6 Subcontractors.

Offerors shall clearly list any proposed subcontractors. Include with their list of proposed subcontractors:

- Subcontractor's contact information;
- Subcontractor's certifications and or licenses required for the performance of the Contract; and,
- Subcontractor's proposed responsibilities under the Offeror's proposal.

2.3.7 Cost of Offer Preparation.

The State of Arizona will not reimburse any Offeror the cost of responding to a Solicitation.

2.3.8 Federal Excise Tax.

The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the Lead State.

2.3.9 Identification of Taxes in Offer.

The State of Arizona is subject to all applicable state and local transaction privilege taxes. If the products and/or services specified require transaction privilege or use taxes or other applicable taxes, they shall be described and itemized separately on the Offer. Arizona transaction privilege tax shall not be considered for evaluation.

2.3.10 Disclosure.

If the Offeror has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offer shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

2.3.11 Unit Price Prevails.

In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

2.3.12 Delivery.

Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

2.3.13 Federal Immigration and Nationality Act.

By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulation (FINA) relating to the immigration status of their employees. The State of Arizona may, at its sole discretion require evidence of compliance during the evaluation process. Should the State of Arizona request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.

2.3.14 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the Offer.

2.4. Submission of Offer

2.4.1 Offer Submission, Due Date, and Time.

Offers in response to this solicitation shall be submitted within the Lead State's e- Procurement system, APP (<https://app.az.gov>). Offers shall be received before the date/time listed in the solicitation's 'Bid Due Date' field. Offers submitted outside of APP, or those that are received on or after the date/time stated in the 'Bid Opening Date' field, shall be rejected. Questions about the submission date and/or time shall be directed to the State of Arizona's Procurement Officer or to the APP Help Desk (app@azdoa.gov or 602.542.7600).

2.4.2 Offer Amendment or Withdrawal.

An Offer may not be amended or withdrawn after the offer due date and time except as otherwise provided under applicable law.

2.4.3 Electronic Submission of Offer.

order for it to be completely/properly received and evaluated. Prior review of the guides available via <https://app.az.gov> and on <https://spo.az.gov> "Vendor Resources" tab can be of assistance in understanding the electronic submission process.

2432 The Lead State (State of Arizona) accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor their emails for such notices and to monitor APP (<https://app.az.gov>) to obtain RFP addenda or other information relating to the RFP.

2.4.4 Non-collusion, Employment, and Services.

By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:

2441 The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and,

2442 The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with applicable federal, state and local laws and executive orders regarding employment.

2.4.5 Waiver and Rejection Rights:

Notwithstanding any other provision of the Solicitation, the State reserves the right to:

2451 Waive any minor informality;

2452 Reject any and all Offers or portions thereof; or,

2453 Cancel the Solicitation. If the Lead State (State of Arizona) determines such action to be in the collective best interests of Participating States, this solicitation may be canceled at any time, up until the time of award of the Master Agreement(s).

2.4.6 A responsive, responsible Offeror shall submit the following:

2461 Offer and Acceptance. Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State of Arizona's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form will result in rejection of the Offer.

2462 Acknowledgement of Solicitation Amendments. Offeror shall acknowledge Solicitation Amendments electronically in APP

(<https://app.az.gov>) no later than the Offer due date and time. Failure to acknowledge all/any Solicitation Amendments may result in rejection of the Offer.

2.4.6.2.1 Alternately to the electronic acknowledgement in APP, the Offeror can attach a counter-signed copy of each Amendment in APP as part of their Offer.

2463 Offer Forms: Offerors shall include all Offer Forms in part 3 of the solicitation, completed accurately, in the format provided and according to the instructions. Failure to follow Offer Form instructions will result in rejection of Offer.

2.5. References and Experience

The Offeror agrees that by submitting an Offer, the State of Arizona or its designated agent may contact any entities listed in the Offer or any entities known to have a previous business relationship with the Offeror for the purpose of obtaining references relative to past performance and verifying experience or other information submitted with the Offer. In addition, by submitting an Offer, the Offeror is agreeing to give permission to the entity to provide information and the Offeror will take whatever action is necessary to facilitate, encourage or authorized the release of information, if necessary, the Offeror shall sign a release to obtain information.

2.6 Responsibility

In accordance with A.R.S. §41-2534(G), A.A.C. R2-7-C312 and R2-7-C316, the State of Arizona shall consider, at a minimum, the following in determining Offeror's responsibility, as well, as the Offeror's responsiveness and acceptability for contract award.

2.6.1 Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;

2.6.2 Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;

2.6.3 Whether the Offeror is legally qualified to contract with the State of Arizona and the Offeror's financial, business, personnel, or other resources, including subcontractors;

2.6.3.1 Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully

prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

- 2.6.4 Whether the Offeror promptly supplied all requested information concerning its responsibility;
- 2.6.5 Whether the Offer was sufficient to permit evaluation by the State of Arizona, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, signed Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- 2.6.6 Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation and its Amendments, including the documents incorporated by reference;
- 2.6.7 Whether the Offer limits the rights of the State;
- 2.6.8 Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State of Arizona or necessary for successful Contract performance. The State of Arizona shall be the sole determiner as to the reasonableness of a condition;
- 2.6.9 Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,
- 2.6.10 Whether the Offeror provides misleading or inaccurate information.

2.7. Responsiveness and Acceptability

Proposals that do not contain information sufficient to evaluate the proposal in accordance with the factors identified in the solicitation or other necessary proposal components may not be considered responsive and/or acceptable. Necessary components include an indication of the Offeror's intent to be bound, price proposal, solicitation amendments, bond and reference data as required.

2.8. Opening

Proposals received by the correct time and date will be opened and the name of

each Offeror will be publicly available through the State of Arizona's eProcurement system (<https://app.az.gov>). Proposals will not be available on the eProcurement system until after contract award.

2.9. Offer Acceptance Period

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

2.10. Clarifications

Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or for eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford Offerors the opportunity to alter or change their proposal.

2.11 Oral Presentations

The State of Arizona may request oral presentations. If requested, the Offeror shall be available for oral presentations with no more than ten (10) business days' advance notice. Participants in the oral presentations should include the Offeror's key persons. Such oral presentations shall not otherwise afford an Offeror the opportunity to alter or change its Offer.

2.12. Evaluation

In accordance with the Arizona Procurement code A.R.S. § 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance:

1. Capacity of Offeror, Years of Experience
2. Method of Approach
3. Cost

Exceptions to the Terms and Conditions, may impact an Offeror's susceptibility for award.

2.13 Discussions

In accordance with A.R.S. § 41-2534, after the initial receipt of proposals, the State may conduct discussions with those Offerors who submit proposals determined by the State to be reasonably susceptible of being selected for award.

2.14. Best and Final Offer (BAFO)

If discussions are conducted, the State of Arizona shall issue a written request for Best and Final Offers (BAFO's). The request shall set forth the date, time and place

for the submission of BAFO's. BAFO's shall be requested only once; unless, the State of Arizona makes a determination that it is advantageous to conduct further discussions.

2.15 Contract Award

Award of a contract will be made to the most responsive and responsible Offeror(s), by category, whose proposal is determined to be the most advantageous to the State of Arizona based on the evaluation criteria set forth in the solicitation.

2.15.1 Number of Types of Awards.

2.15.1.1 Each State reserves the right to enter into a single Participating Addendum (PA) or enter into multiple PAs, whichever is most advantageous to the Participating State.

2.15.2 Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the State of Arizona's Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.

2.16 Public Record

All Proposals submitted in response to this Request for Proposal shall become the property of the State of Arizona and shall become a matter of Public Record available for review and must be retained by the State of Arizona for six years. Offers shall be open and available to public inspection through the State of Arizona's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State of Arizona.

2.17 Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the State of Arizona's Procurement Officer of the purchasing agency and with the State of Arizona's Procurement Administrator. A protest of a Solicitation shall be received by the State of Arizona's Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

2.17.1 The name, address and telephone number of the protester;

2.17.2 The signature of the protester or its representative;

2.17.3 Identification of the purchasing agency and the Solicitation or Contract number;

- 2.17.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and,
- 2.17.5 The form of relief requested.

Section 3: Scope of Work

Contractor shall provide equipment, services, and maintenance support to meet the mailing needs of the customer per the limitations of their award. The applicable product range will include, but not be limited to, software license and subscriptions, ultra-low volume equipment through equipment used in mailing production environments, including postage meter rental, accessories, supplies, and maintenance. All equipment and services offered must meet the approval of the USPS® if applicable.

3.2 Products

- 3.2.1 Any awarded contractor(s) shall also include, upon agency request, information on all environmental features of each item, including but not limited to: energy efficiency modes and their operation, double sided copying operations and double sided default programming, the extent to which any supplies and other packaging may qualify for recycling, re-manufacturing, and will provide the environmental and economic benefits of these features.
- 3.2.1.1. **Printers** – The only printers allowed for purchase through this solicitation are special printers sole use for which is tied to mailroom equipment. If a regular printer (e.g. an HP Printer) is able to be utilized in the same fashion, and function as the printer available from the Contractor, then the printer from the Contractor is not allowed. Allowable printers may be purchased with a mailroom equipment system or as a product replacement from a purchase from this or a previous Master Agreement.
- 3.2.1.2. **Computers** - The only computers allowed for purchase through this Master Agreement are those computers dedicated to mailroom equipment and operations.
- 3213 **Furniture** - Furniture is being awarded within each category as well as being classified as an independent category. The furniture that is applicable to the independent furniture category is furniture that is specific to mailrooms but not specific to the mail equipment category. E.g. Case work or mobile mail cart etc. The furniture section within each category is relevant to furniture that would be considered specific to the Mailing Equipment with which they are compatible.
- 3214 **Accessories** – All accessories, including tablets and scanners, shall be relevant to the functioning of a mailroom. If there is any concern over a specific item being included in this category, said items will be submitted to the Lead State Contract Administrator for a decision. The Lead State Contract Administrator's decision is the final determination as to whether an item is included in the Scope of any Master Agreement.

- 321.5 **Trade In/Buy Back** - Contractor shall provide a Trade in /Buy Back program to help ensure Participating Entity has the best options to meet their needs. This program is required; however, it is at the sole option of the Participating Entity to utilize this program.
- 321.6 All equipment identified as EnergyStar compliant shall be delivered and installed with the Energy Star or similar power management features enabled.

3.3. Remanufactured Equipment

- 3.3.1 A Contractor may offer Remanufactured or Refurbished Equipment that is certified by the Manufacturer. All Remanufactured or Refurbished Equipment will be clearly labeled as Remanufactured equipment. Pricing will be based on a quote and on an Individual Case Basis (ICB). Pricing must not exceed prices listed in approved price book at the time of purchase. All quotes will also provide the fixed annual maintenance rate for years 2-5. Remanufactured equipment shall come with a 1 year all-inclusive as new-warranty and the Offeror shall be able to provide maintenance for years 2-5 that includes all service, labor, software maintenance, and parts. If for any reason a Contractor is not able to provide maintenance (including parts), the Contractor(s) will provide, entirely at their expense, a replacement piece of equipment and/or software. Any replacement items shall have the equal or greater performance and functionality along with the maintenance for the equipment for the duration of the original five (5) year maintenance period (including maintenance on the replacement equipment) at no additional charge. All other requirements of the Master Agreement continue to apply.

3.4. Shipping and Delivery

- 3.4.1 Shipping is to be FOB destination, inside to the contiguous 48 states, Washington DC and point of exportation for Alaska, Hawaii, Puerto Rico, and territories for shipments outside the 48 contiguous states. The point of exportation location must be agreed to, in writing, by the vendor and the Participating Entity. At that point, shipping terms, charges and conditions should be negotiated with the end-user. These Participating Entities must be notified in advance of any possible shipping charges and mutually agreed to in writing before any purchase or lease is allowed.
- The Contractor(s) shall furnish equipment within twenty (20) business days after receipt of order, or a delivery time mutually agreed upon, in writing, between the Participating Entity and the Contractor. The Contractor shall notify the Participating Entity in advance of delivery of equipment so that the Participating Entity can make necessary arrangements. Delivery of start-up supplies shall be made upon or before delivery of equipment. Delivery shall be made in accordance with instructions (time and quantities ordered) from the

Participating Entity as detailed on the Purchase Order. All deliveries shall be accompanied with a Bill of Lading containing the Purchase Order number, the items ordered, the Master Agreement numbers, (both the Master Agreement number and the Participating Entities number) pricing and any special instructions. If there is a discrepancy between the Purchase Order and what is listed on the Master Agreement, it is the Contractor's obligation to seek clarification from the Participating Entity.

All deliveries and installation work shall be performed during regular working hours, defined as 7:00 A.M. to 6:00 P.M. Monday through Friday. Changes may be granted with written approval of the Participating Entity. Any delivery required to be performed outside regular working hours or on Saturdays, Sundays or legal holidays, as may be reasonably required consistent with contractual obligations, and if agreeable to both the Contractor and the Participating Entity, shall be agreed to in writing by both parties.

The Contractor shall be responsible for the delivery of equipment in first class condition at the point of assembly, and in accordance with good commercial practices. The Contractor shall also be responsible for the removing of all debris associated with the purchase from the premises.

- Packing for shipment shall be provided to adequately protect the product and ensure safe shipment.
- Shipping cases shall be marked to indicate the name of the Contractor/Manufacturer's name and address of receiving Participating Entity, Purchase Order number, and Contract number (both the Master Agreement number and the Participating Entities number).

Participating Entities are authorized to order and the Contractor is authorized to ship only those items approved and awarded under the Master Agreement. If any items other than those awarded in the applicable Master Agreement and not eliminated in the PA negotiation process have been ordered and delivered, the Participating Entity shall take any steps necessary to have the items returned to the Contractor. Contractor shall issue full credit upon return of item(s). Violation may result in administrative actions including, but not be limited to termination of the Participating Addendum or the Master Agreement.

3.4 Training & Support Services

- 3.4.1 Upon delivery and installation of specified equipment, the Contractor shall provide training to personnel designated by the Participating Entity. Operational Training must be provided to the designated personnel until the personnel are able to operate the

equipment independently. The amount of training is determined by the complexity of the equipment purchased, rented or leased by the Participating Entity. Installed product and system training shall be included in the price. Contractor shall provide additional training at the Participating Entity's request throughout the life of the equipment. All training will be performed on the Participating Entity's sites, via remote or electronic delivery. Site required training will be at no additional charge if the equipment is either under warranty or an active maintenance plan. Upon the mutual agreement of both parties, additional training outside of initial installation will be at the participating entity's expense. Contractor will be responsible for the cost of all travel, lodging and food; no charges will be passed on to the Participating Entity.

The Contractor must agree to maintain a toll-free technical support telephone line. The telephone line shall be accessible to Participating Entity personnel who need to obtain competent technical assistance regarding the installation or operation of the Contractor's equipment. The toll-free support line shall be available during regular working hours, defined as 7:00 A.M. to 6:00 P.M. local time Monday through Friday.

3.5 Instruction Manuals

- 3.5.1 Instruction manuals shall be included at no cost for each piece of equipment that is purchased or rented. The instruction manual shall contain, but not be limited to:
- Glossary
 - A section defining the capabilities of the equipment (specifications)
 - A general section describing the technical operation of the equipment
 - A section describing the installation and use criteria of the equipment
 - A section on the primary points of contact for sales, training and maintenance/service
 - All manuals and instruction shall be in the English language

3.6 Technology Advancements

New equipment and technologies may be considered for the possible implementation as long as they are in consonance with USPS rules and guidelines. New equipment and technologies may be offered to the Lead State, twice annually for review and approval. New products are added at the discretion of the Lead State.

3.7 Software purchases or subscriptions

Software acquired under this Master Agreement shall be specific to the needs of mail operations. Purchase order shall reference a manufacturer's most recent release or version of the product unless the Participating Entity specifically requests in writing a different version. As a minimum, software licenses shall provide license rights as prescribed in section 20 of the NASPO ValuePoint Master Agreement Terms and Conditions in Section 6 of this RFP. Software rights other than as proposed shall be negotiated and agreed to by the Participating Entity as defined in the Participating Addendum.

- 3.7.1 In addition to the services directly associated with the receipt of product under this Scope, the Contractor(s) will provide services related to the selection, purchase and management of distributed software, these services include, but are not limited to:
 - 3.7.1.1 Assemble, Production Equipment Only
 - 3.7.1.2 Software Installation/Integration
 - 3.7.1.3 Design, Production Equipment only
 - 3.7.1.4 Maintenance, Annual and Time and Material
 - 3.7.1.5 Legacy Maintenance
 - 3.7.1.6 Lease/Rental/Purchase Options

3.8. Equipment Performance

- 3.8.1 Equipment at each individual location shall maintain, at all times a 95% or better uptime. Downtime shall be computed from the time the Contractor representative is notified of equipment failure until the equipment is fully operational. Equipment that does not meet the performance standard of 95% for a two (2) consecutive month period or for three (3) months in a rolling twelve (12) month period shall be replaced by the Contractor with equal or better equipment. It is understood and accepted that equipment failure may not be attributed to the use of recycled paper and/or recycled/remanufactured supplies, as long as those products meet the specifications set by the USPS.

- 3.8.2 *Repair or Replacement of Unsatisfactory Equipment.*

The Contractor shall grant a credit for any equipment which fails to perform at the effectiveness level defined in section 3.8.1. The credit shall be equivalent to the percentage of down time experienced within that month.

The Contractor may elect to replace a defective component in Production Equipment. The Participating Entity shall notify the Contractor in writing if the repair does not resolve the issue. This written notification will act as a cure letter allowing fifteen (15) days to have resolution plan in place.

During the warranty period, unsatisfactory equipment performance will require an even exchange of equipment of equal or greater performance at no additional cost.

After the warranty period, the credit value shall be the amount paid at the time of purchase.

If equipment or software is not functional after 60 days of delivery, the Purchasing Entity may return for full refund or cancel any rental or lease agreement with no fees or charges of any kind.

3.9. Maintenance on Purchased Equipment

3.9.1 This Master Agreement recognizes two (2) categories of maintenance, Preventive maintenance and Repair Service which is covered by the Service Level Agreement. The Contractor must have the resources, distribution capabilities, inventory of parts, consumable supplies, and staff to meet the requirements of the Master Agreement. Contractor or Contractor's Authorized Dealers/Partners shall maintain replacement parts to ensure minimum downtime. Pricing shall include all maintenance including, but not limited to, all parts, labor and time, and preventative maintenance services at the levels specified for each piece of equipment. The Contractor must offer a full service maintenance contract for all equipment placed. However, the Participating Entity shall have the option of not entering into a maintenance/service contract on purchased equipment, but choose to utilize the Time and Materials option. On-site service shall be available on an immediate need service call basis. Preventive scheduled maintenance is based on the equipment requirements by the Manufacturer. These shall include, cleaning, lubrication, parts replacement and necessary adjustments. Maintenance on any equipment purchased under the Master Agreement must be available for five years.

- Contractor /Authorized Dealer shall provide and maintain a toll-free number, an email address and a fax number for Maintenance and Repair Service.

3.9.2 If a Contractor is called due to non-performance of a system, and the Contractor arrives and determines that the issue is with an excluded item and not their product, they will notify the Purchasing Entity. If the equipment is under a maintenance agreement or in the initial one-year warranty time frame, there will be no cost to the Purchasing Entity for the diagnostic call. If the equipment is not under warranty or a maintenance plan the Contractor may charge their hourly contracted rate.

3.10 Service Level Agreements

3.10.1 All Service Level Agreements shall meet the following requirements:

3.10.1.1 Two (2) hour response time (acknowledgement) to all written or oral notices of a service requirement due to

- an equipment stoppage or malfunction.
- 3.10.12 A factory trained service technician, shall be on site before close business or within 4 hours at the start of the next business day.
- 3.10.13 Any Purchasing Entities that require a 24hr/7 days per week maintenance agreement will be negotiated during the PA process.
- 3.10.14 All parts that require maintenance by a service technician are to be included and considered part of the service repair plan. Failed/defective parts shall be replaced at no additional charge to the Participating Entity.
- 3.10.15 Consumable supplies shall be billed separately.
- 3.10.16 If the equipment includes licensed software, the Contractor shall provide software support.
- 3.10.17 Contractor shall maintain a service log for each piece of equipment at each location. Service log shall be available for Participating entity to review.
- 3.10.18 The Contractor shall supply loaner equipment at equal or greater functionality, at no additional charge, for any inoperable equipment exceeding three (3) business days from time of diagnosis. The Contractor may offer, in lieu of loaner equipment, to provide production or alternative services during the period of repair. This shall be mutually agreed upon in writing beforehand.

3.11 Legacy Maintenance

- 3.11.1 The Contractor shall provide maintenance on legacy devices already sold to a Participating Entity. Pricing will be provided on an Individual Case Basis (ICB), through a quote process.
- 3.11.2 The Contractor must have the resources, distribution capabilities, inventory of parts, consumable supplies and staff to meet the requirements of any Master Agreement. Legacy maintenance pricing shall include but not be limited to all parts, labor and time at the levels specified for each piece of equipment that has previously been purchased from the Manufacturer. The Participating Entity shall have the option of not entering into a maintenance/service contract on purchased equipment, but choose to utilize the Time and Materials option. On-site service is to be available on both an immediate need service call basis, and as needed for preventive maintenance. Preventive maintenance shall be based on the needs of the individual equipment as determined by the manufacturer. This shall include cleaning, lubrication, necessary adjustments, and replacement of unserviceable parts. Maintenance shall be available for equipment that is up to 10 years old from date of purchase.

3.12 Design and Software Consulting Services

Design layout services must be provided at no cost by the Contractor, with the exception of production environment equipment and software consulting services. The total number of hours/days required for services must be agreed to in writing before any design services or software consulting services are initiated. The Contractor shall only charge for actual costs incurred.

3.13 Installation/Integration

- 3.13.1 All equipment prices shall include installation, with the exception of integrating software solutions and Production Equipment. Contractor may charge the contracted rate for integrating software and Production equipment installation. The total number of hours/days needed shall be agreed to, in writing, before any Installation or, Integration services may be initiated. The Contractor shall charge only for actual costs incurred.
- 3.13.2 If a Contractor needs to utilize special Rigging (e.g. a crane) where the Participating Entity does not have an elevator accessible for moving the equipment, they may charge the hourly Installation /Integration rate. However, all “rigging” charges shall be mutually agreed to, in writing, before work begins.
- 3.13.3 Contractor shall affix a label or a decal to the equipment at the time of installation showing warranty period by dates, and the name, address, and telephone number of the Contractor responsible for warranty service of the equipment.
- 3.13.4 The Contractor and the participating entity shall, prior to purchase, review the installation location to ensure the proposed location meets the manufacturer's installation criteria. If special installation is required, the Contractor and Participating Entity shall agree in writing, to the total cost of the installation based on the hourly/daily rates provided within the Master Agreement. Should the proposed installation location not meet established installation criteria, the Contractor and the Participating Entity may attempt to locate an alternate mutually agreeable location for the equipment.

3.14 Software Maintenance.

Maintenance shall be available for all software licenses purchased. Software maintenance shall include all software updates, patches and new releases/versions and shall be available to all Participating Entities. It is the Contractor's responsibility to communicate all updates, patches, and new releases/versions to all end users. No additional fee shall be charged for installation of the upgrades. The Contractor shall be responsible for Postage Scale software licensing.

3.15 Equipment Leasing.

Participating Entities may enter into lease agreements for the products covered in the Master Agreement. Responders who wish to participate in lease agreements with these individual states/entities must submit copies of all of their lease agreements with their response to this RFP. The lease agreements will not be reviewed or evaluated as part of the RFP evaluation process. The agreements will simply be made available to any state or entity who wishes to negotiate a lease agreement with a Contractor. Any additional Terms and Conditions submitted that are specifically for Equipment Leasing will not become part of the Master Agreement, but the negotiated Lease T&C's will be made part of the PA.

3.16 Equipment Rental.

Individual Participating States and Participating Entities may enter into rental agreements for the products covered in the Master Agreements resulting from the RFP, if they have the legal authority to enter into these types of agreements. Responders who wish to participate in rental agreements with these individual Participating Entities must submit copies of all of their pertinent rental agreements with their responses to this RFP. No additional Terms and Conditions shall apply to any rental agreements. The rental agreements will not be reviewed or evaluated as part of the evaluation process. The agreements will simply be made available to any state or entity who wishes to negotiate a rental agreement with a Contractor. Any additional Terms and Conditions submitted that are specifically for Equipment Rental will not become part of the Master Agreement, but the negotiated Rental T&C's will be made part of the PA.

3.17 Customer Service and Representation

- 3.17.1 *Dedicated Representation and Timely Response.* Contractor shall provide a dedicated representative for each Participating Entity. The Contractor shall submit a list of all Subcontractors by State. The list shall include the name of the dealer, the contact name, title, phone number, physical address, and email address. The Participating Entity shall have sole discretion as to which of the Subcontractors they choose to utilize. The Representative will provide an individual for quote assistance, equipment, services and support recommendations, track and report on equipment lease/rental renewal deadlines, and serve as a contact point for the Participating Entity. Contractor and Authorized Dealers must commit to returning phone calls or responding to emails within two business days.
- 3.17.2 *Problem Escalation.* Contractor must provide an incident escalation path for each Participating Entity, providing on that Participating Entity's website, the name, contact information, and role of individuals to whom problems should be escalated if the problems are not resolved by primary contact with both the Contractor and Authorized Dealer/Partner.
- 3.17.3 *Contract Reviews.* The Contractor shall attend an annual meeting with Lead State Contract Administrator and sourcing team to review

usage and discuss any issues that are occurring, if requested. The Contractor shall meet more often if the Lead State Contract Administrator deems necessary. The Contractor shall conduct a customer satisfaction survey and detailed issues encountered during the previous six-month term. The Contractor shall be prepared to discuss overall effectiveness of contract, total sales, potential cost savings opportunities when could be passed through to the Participating Entities. In a renewal year, the annual review will take place prior to contract extensions. The Lead State Contractor Administrator shall schedule the meeting with the Contractor.

3.18 Price

Pricing shall be a discount off of MSRP list price, with the following exceptions:

1. Maintenance shall be priced based on a Time and Material basis (hourly rate), Design (For Production Equipment only),
2. Installation (Production Equipment only), and Software Consulting Services shall be provided on an hourly/daily rate basis.

Contractor shall submit catalog within 15 days of notice of award. Catalog will include MSRP prices, SKU#, and final contract price. Contractor may propose new products within the category on an annual basis; approval will be at the discretion of the Lead State.

Individual Participating Addendum (PA) may use the Master Agreement pricing as a base and may negotiate an adjusted rate. Any negotiated PA rates, exclusive of taxes or any individual state's administrative fee, shall not exceed the Master Agreement rates. As requested by Purchasing Entity, for example on a high volume single order, Contractor may negotiate to reduce cost for the Participating Entity. Firm individual order quotes shall be provided to Purchasing Entity prior to order submittal. All quotes for purchase, rental or lease shall contain enough detail to easily validate pricing contained within the Master Agreement.

- 3.18.1 *Telephone or Email Quote Support.* Contractor/Authorized Dealer shall accept requests for quotes by telephone, fax, and email. Contractor /Authorized Dealer shall provide and maintain a toll-free number for Purchasing Entity to use. Contractor shall provide an email address for receipt of requests for price quotes. The Contractor must provide written quotes by fax, email or online as requested by the Participating Entity.
- 3.18.2 *Timely Quotes.* Contractor/Authorized Dealer agrees to provide quotes in a timely fashion. Expected response should be within 24 hours but no more than three business days after receiving all of the pertinent information.
- 3.18.3 *Guaranteed 90 Day Quote.* Contractor is required to honor all quotes for 90 calendar days.

- 3.18.4 *Sales Promotion.* The Contractor may conduct sales promotions involving specific products for specified time periods. The promotion should include: the product, the promotional price as compared to the original price and the start and end dates of the sales promotion. The contractor shall maintain a record of all sales promotions and make it available upon request.
- 3.18.5 *Extra-contractual Products and Services Prohibited.* Products and services not awarded in this contract are prohibited from being offered.

3.19 Product Categories

Postage Meter Rental (to include Legacy Postage Meters)

- Digital postage meter must have display that provides date, piece-count, postage used, and postage unused.
- Must be refillable by phone and/or electronically that may be placed on a master account or paid by a purchase card.
- Must imprint postage from \$0.01 to \$99.99.
- No administrative fees for postage meter refills.
- Rental renewal available annually.
- No automatic renewals shall be allowed on this contract.
- No penalties for early rental termination.

Mailing Systems. Ultra Low Volume

- Digital or IBI (Information Based Indicia) Operation to conform with all USPS® requirements.

-
- Manual Feed.
 - Must meter, date envelopes.
 - Handles mail envelopes from 3½" x 5" to 12" x 15".
 - Interfaces with postage scales.
 - Must include locking key or security feature.
 - Must imprint postage from \$0.01 to \$99.99.
 - Must have replaceable ink cartridge.
 - Must have wet or dry tape system for oversize packages.

Mailing Equipment. Mailing Systems. Low Volume

- Digital or IBI (Information Based Indicia) Operation to conform with all USPS® requirements.
- Minimum feed speed of 30 pieces/minute.
- Must meter, date, and seal envelopes.
- Handles standard mail envelopes from 3½" x 5" to 12" x 15".
- Interfaces with postage scales.
- Must include locking key or security feature.

- Must imprint postage from \$0.01 to \$99.99.
- Must have replaceable ink cartridge.
- Must have wet or dry tape system for oversize packages.

Mailing Equipment, Mailing Systems, Medium Volume

- Digital or IBI (Information Based Indicia) Operation to conform with USPS® requirements.
- Minimum feed speed of 45 pieces/minute.
- Must meter, date, and seal envelopes.
- Handles letter mail and large envelopes up to 3/8" thick and 7-1/2" wide.
- Interfaces with postage scales up to 100 lbs.
- Includes tape dispenser for parcel.
- Must imprint postage from \$0.01 to \$99.99.
- Must include locking key or security feature.
- Must have replaceable ink cartridge.
- To include water reservoir with water level indicator.
- Must have sealed and non-sealed modes.

Mailing Systems, High Volume

- Digital or IBI (Information Based Indicia) Operation to conform with USPS® requirements.
- Minimum feed speed of 200 pieces/minute.
- Must meter, date, and seal envelopes.
- Handles letter mail and large envelopes from 3"x 5" to 13" x 13".
- Interfaces with postage scales up to 100lbs.
- Includes Tape Dispenser for parcel.
- Must imprint postage from \$0.01 to \$99.99.
- Must include locking key or security feature.
- Must have replaceable ink cartridge.
- To include water reservoir with water level indicator.
- Must have sealed and non-sealed modes.

Mailing System, Production

- Digital or IBI Operation to conform with USPS® requirements.
- Minimum feed speed of 300+ pieces/minute.
- Must meter, date, and seal envelopes.
- Handles letter mail and large envelopes from 3"x 5" to 13" x 13".
- Interfaces with postage scales up to 100 lbs.
- Includes Tape Dispenser for parcel.
- Must imprint postage from \$0.01 to \$99.99.
- Must include locking key or security feature.
- Must have replaceable ink cartridge.
- To include water reservoir with water level indicator.
- Must have sealed and non-sealed modes.

Integrated Postal Scales

- Capable of Interfacing with Postage Meter.
- Includes variety of rates including: Standard, First Class, Priority Mail, Certified Mail, Return Receipt Registered, C.O.D., Insured, Registered, Bulk Rates, etc.
- Includes keyboard graphics, operator prompts and menu selections.
- Special Carrier Rates.
- Capable of weighing to a 32nd of an oz., displaying in increments of 0.5 oz.
- Must electronically set postage meter by the touch of one button.
- Must include postal rate changes at no additional cost throughout the lease or maintenance contract.

Letter Openers. Low Volume

- Includes Feeder and Stacker, Variable Trim Control.
- Processing speed up to 10,000 pieces per hour Minimum.
- Self-Sharpening trim blade adjusts to allow for narrow or wide cut.
- Includes Tray that collects 80 #10 opened envelopes and trimmings

Letter Openers. High Volume

- Includes Feeder and Stacker, Variable Trim Control.
- Processing speed over 20,000 pieces per hour Minimum.
- Self-Sharpening trim blade adjusts to allow for narrow or wide cut.
- Includes Tray that collects 150 opened envelopes and trimmings.

Letter Folders. Low Volume

- Automatic.
- Folds up to 10,000 sheets per hour minimum.
- Completes Standard or Custom folds. •
- Handles at a minimum paper from 3-1/8" x 4" x 9-1/2" x 14".

Letter Folders. High Volume

- Automatic.
- Folds more than 20,000 sheets per hour minimum.
- Completes Standard or Custom folds.
- Handles at a minimum paper from 3-1/8" x 4" x 12" x 18".
- Able to process Multiple Folds.

Inserters. Production

- Processes up to 5,500 sheets per hour minimum.
- Feeds, collates, folds, and, inserts material into envelopes.
- Jobs can be pre-programmed.

Folder/Inserters. Low volume

- Automatic.
- Completes Standard or Custom folds.
- Handles paper from 3-1/8" x 4" x 9-1/2" x 14".
- Processes up to 1,500 sheets per hour minimum.
- Feeds, collates, folds, and, inserts material into envelopes.
- Jobs can be pre-programmed.

Folders/Inserters. Medium Volume

- Automatic.
- Completes Standard or Custom folds.
- Handles paper from 3-1/8" x 4" x 9-1/2" x 14".
- Processes up from 1501 – 4,999 sheets per hour minimum.
- Feeds, collates, folds, and, inserts material into envelopes.
- Jobs can be pre-programmed.

Folders/Inserters. High Volume

- Automatic.
- Completes Standard or Custom folds.
- Handles paper from 3-1/8" x 4" x 9-1/2" x 14".
- Processes up to 5,000 – 9,999 sheets per hour minimum.
- Feeds, collates, folds, and, inserts material into envelopes.
- Jobs can be pre-programmed.

Folders/Inserters. Production

- Automatic.
- Completes Standard or Custom folds.
- Handles paper from 3-1/8" x 4" x 9-1/2" x 14".
- Processes over 10,000 sheets per hour minimum.
- Feeds, collates, folds, and, inserts material into envelopes.
- Jobs can be pre-programmed.

Envelope Mail Labeler. Low Volume

- Label Speed: up to 5,000 # 10 envelopes per hour.
- Applies permanent (peel off) labels ranging in size from 1" to 4" high and maximum backing strip of 6".
- Adjustable label positioning from side-to-side and top-to-bottom of document.
- Motor driven take-up reel for label backing and control for adjusting for different types of labels and backing.
- Includes digital counter.

Envelope Mail Labeler. Medium Volume

- Label Speed: up to 10,000 # 10 envelopes per hour.
- Applies permanent (peel off) labels ranging in size from 1" to 4" high and maximum backing strip of 6".
- Adjustable label positioning from side-to-side and top-to-bottom of document.

- Motor driven take-up reel for label backing and control for adjusting for different types of labels and backing.
- Includes digital counter.

Envelope Mail Labeler, High Volume

- Label Speed: up to 15,000 # 10 envelopes per hour.
- Applies permanent (peel off) labels ranging in size from 1" to 4" high and maximum backing strip of 6".
- Adjustable label positioning from side-to-side and top-to-bottom of document.
- Motor driven take-up reel for label backing and control for adjusting for different types of labels and backing.
- Includes digital counter.

Envelope Mail Labeler, Production

- Label Speed: up to 25,000 # 10 envelopes per hour.
- Applies permanent (peel off) labels ranging in size from 1" to 4" high and maximum backing strip of 6".
- Adjustable label positioning from side-to-side and top-to-bottom of document.
- Motor driven take-up reel for label backing and control for adjusting for different types of labels and backing.
- Includes digital counter.

Envelope Addressing System, Ink Jet, Low Volume

- Label Speed: up to 2,500 # 10 envelopes per hour.
- Applies address information directly to envelopes.
- Adjustable printing positioning from side-to-side and top-to-bottom of document.
- Adjustable print resolution.
- Scalable fonts.
- Interface with Windows based software.
- Includes digital counter.

Envelope Addressing System, Ink Jet, Medium Volume

- Label Speed: up to 5,000 # 10 envelopes per hour.
- Applies address information directly to envelopes.
- Adjustable printing positioning from side-to-side and top-to-bottom of document.
- Adjustable print resolution.
- Interface with Windows based software.
- Includes digital counter.

Envelope Addressing System, Ink Jet, High Volume

- Label Speed: up to 24,999 # 10 envelopes per hour.
- Applies address information directly to envelopes.
- Adjustable printing positioning from side-to-side and top-to-bottom of document.

- Adjustable print resolution.
- Multiple print heads.
- Movable print heads.
- Print USPS Bar Codes.
- Scalable fonts.
- Interface with Windows based software.
- Includes digital counter.

Envelope Addressing System. Ink Jet. Production

- Label Speed: over 25,000 # 10 envelopes per hour.
- Applies address information directly to envelopes.
- Adjustable printing positioning from side-to-side and top-to-bottom of document.
- Adjustable print resolution.
- Multiple print heads.
- Movable print heads.
- Scalable fonts.
- Print USPS Bar Codes.
- Interface with Windows based software.
- Includes digital counter.

Tabbers. Low Volume

- Complies with all USPS® regulations.
- Single-tab speeds up to 15,000/Hr.
- Multiple tabbing options (paper, clear translucent with or without perforation etc.).
- Easy Programming and Set up.
- Automatic size adjusting (accepts various tab sizes).
- Accepts various types and sizes of media.

Tabbers. Medium Volume

- Complies with all USPS® regulations.
- Single-tab speeds from 15,001 - 22,000/Hr.
- Multiple tabbing options (paper, clear translucent with or without perforation etc.).
- Easy Programming and Set up.
- Automatic size adjusting (accepts various tab sizes).
- Accepts various types and sizes of media.

Tabbers. High Volume

- Complies with all USPS® regulations.
- Single-tab speeds greater than 22,001/Hr. – 50,000/Hr.
- Multiple tabbing options (paper, clear translucent with or without perforation etc.).
- Easy Programming and Set up.
- Accepts various types and sizes of media.

Tabbers. Production

- Complies with all USPS® regulations.
- Single-tab speeds greater than 50,000/Hr.
- Multiple tabbing options (paper, clear translucent with or without perforation etc.).
- Easy Programming and Set up.
- Accepts various types and sizes of media.

Check Imprinting/Endorsing

- Minimum monthly volume of 25,000.
- Utilize both cut sheet and continuous style documents.
- Able to provide a variety of options with regards to signatures, date stamps, seals and logos on various locations on the document.
- Counters that can be reset and non-reset for audit purposes.
- Offers both tri-color and ultraviolet ink roll options.

Pressure Sealing. Production

- Creates a single piece mailer from a full range of stock or custom forms.
- Creates a single piece mailer with a continuous seal formed to assure security and confidentiality.
- Must be able to detect when “double documents” are processed.
- Must be able to detect document jams during production.
- Shall have emergency shut off/safety devise.

Bursting Equipment. Production

- Able to burst cut sheet.
- Able to burst at the perforation.
- Stack sequentially and continuous multipart documents.
- Burst at the horizontal perforations.
- Burst various locations of perforations.

Pre-sorting Equipment. Production

- Minimum monthly volume of 100,000.
- Ability to sort various sizes of envelopes, flats and packages.
- Multiple Station.
- Various rates of speed.
- Ability to process the entire range of USPS.

Extractors

- Processes up to 3000 pieces per hour.
- One, Two, or, Three Sided Opening.
- Includes counting and monitoring system that counts pieces processed.
- Capable of processing various sizes of intermixed mail up to and including #11 envelopes, heights to 5-1/4”.

Mailing Furniture (specific to a category)

- Mailroom furniture shall be appropriate for the mailroom category being it is being offered in.
- Mailroom work tables, pedestals, bins etc. must be constructed of wood, steel or plastic bases with steel, laminate or wood tops that can support the daily use and weight of mailroom product and equipment.
- Only furniture specifically related to the category/group of equipment may be purchased under this category.

Mailing Furniture (general)

- Mailroom furniture shall not be specific to a piece of equipment or a category/group.
- Mailroom free standing mail sorter tables, case works, mail carts etc. must be constructed of wood, steel or plastic bases with steel, laminate or wood tops that can support the dialing use and weight of mailroom activity.

Accessories

- Mailroom accessories must be appropriate for a mailroom operation.
- All accessories related to equipment configurations must be identified in the equipment catalogs with the associated percentage % discount(s) off the manufacturer's suggested retail price.

Software, License and Subscription

- Commercial off-the-shelf (COTS) and customized mailroom related software utilized by mailing equipment (e.g. tracking software or accounting software) and purchased/leased on either a monthly or annual basis.
- All software must be specifically utilized only for mailing equipment operations.
- Includes licensing, software maintenance, technical support and updates.
- All installations will be performed by the Contracted Supplier.
- Updates shall be performed by Contracted Supplier or user.

Software Integration

- Consulting services provided by Contractor that includes but not limited to the process of bringing together applications into one system to ensure the applications function together as a whole for mailing room operations functionality.

Training

- *Additional* training services as specified in Section 3.4.1.

Supplies /Consumables

- All Supplies/Consumables needed to operate the mailing device or equipment.
- Regular paper is not included in this category.
- Labels for addressing and other mailroom purposes are included.

Design, Production Only

- Billable only for Production equipment.
- Total hours/days with total fee will be agreed to in writing from both parties before any work will begin.
- All other Design work is included in the cost of the mailing equipment.

Assembly/Installation. Production Only

- Billable only for Production equipment.
- Total hours/days with total fee will be agreed to in writing from both parties before any work will begin.
- All other Installation work is included in the cost of the mailing equipment.

Equipment Leasing

- See section 3.15.

Equipment Rental

- See section 3.16.

Equipment Relocations Services

- Equipment Relocation Services include: dismantling, packing, transporting and re-installing equipment at the Client Agency's request. No additional charges shall be incurred for fuel or tolls. Awarded contractors may charge for device moves. Such charges must be in the format listed below according to the distance from the original placement:

Move Zone	Distance from the Original Device Placement	Allowable Charge Format
Zone 1	100 Yards or less; or within the same Building	No Charge Allowed
Zone 2	Between Zone 1 and 50 miles	Flat Fee
Zone 3	Outside of Zone 2	Per mile fee

Section 4: NASPO ValuePoint Master Agreement Statement of Compliance

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

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Section 6 and Lead State specific terms and conditions required to execute a master agreement, the statement of work, Section 3 and selected portions of the Offeror's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offerors will be bound to all the terms and conditions when executing a Master Agreement as shown in section 6. Offerors must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (section 6).

4.1.a Insurance

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

4.1.b NASPO ValuePoint Administrative Fee and Reporting Requirements

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

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

4.2 Lead State Terms and Conditions.

Refer to Section 7 for the Lead State Special Terms and Conditions that apply to this solicitation and the resulting Master Agreements

Section 5: Price and Cost Proposal

Cost proposal must be submitted to the Lead State as a separate document in Offerors Proposal. **Do not embed cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per Attachment 4.

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

Offeror must submit cost, prices and rates as required by (Pricing and Pricing Scenario Workbooks attached in APP within the Attachments Tab), Cost Sheets. Prices and rates shall include all anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

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



Section 6: 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) limited liability company. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 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.
- 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 one (1) year. The term of this Master Agreement may be amended beyond the initial term for four (4) 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.
- 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.
- 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. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

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 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 4.4 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.
- 4.5 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.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 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.
- 4.8 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.
- 4.9 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.

- 4.10 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 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 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report must be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated

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

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

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

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

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, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request

of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

- 5.5 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 vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after 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.
- 5.6 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.
- 5.7 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 rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 90 days prior to the effective date.
- 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 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 and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 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 substantially 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 the 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, 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 inadequately 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 identify 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.

Section 7: Lead State (State of Arizona) Terms and Conditions

7.1 State of Arizona Special terms and Conditions

A. Purpose

Pursuant to provisions of the Arizona Procurement Code. A.R.S. §§ 41-2501 *et seq.*, the State of Arizona intends to establish a Contract (Participating Addendum, PA) for the materials or services as listed herein on service to the State.

B. Licenses

Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

C. Volume of Work

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

D. Key Personnel

It is essential that the contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must assign specific individuals to the key positions.

1. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.
2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the contractor shall immediately notify the State and shall subject to the concurrence of the State, replace such personnel of substantially equal ability and qualifications.

E. Price or Rate Adjustment

Any price or rate adjustment shall be within the confines of the awarded contract, or as negotiated in service to this Contract. Any price or rate adjustment requested must not exceed the Producers Price Index (PPI) by Industry: Other Commercial and Service Industry Machinery Manufacturing: Mailing, Letter Handling, and Addressing Machines, Except Parts and Attachments, Series ID: PCU3333183333183A at time of requested adjustment. Any negotiated price adjustments for this Contract shall be documented via a bilateral Contract Amendment.

F. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

G. Employees of the Contractor

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

H. Warranty

All services supplied under this Contract shall be fully guaranteed by the Contractor for a minimum period of ninety (90) days from the date of acceptance by the State. Any defects of design, workmanship, or delivered materials that would result in non-compliance shall be fully corrected by the Contractor without cost to the State.

I. Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

1. Method of Assessment:

At the completion of each quarter, the contractor reviews all sales under their contract in preparation for submission of their Usage Report. The contractor identifies all sales receipts transacted by members of the State Purchasing Cooperative and assesses one percent (1.0%) of this amount in their Usage Report. An updated list of State Purchasing Cooperative members may be found at: <https://spo.az.gov/state-purchasing-cooperative>. At its option, the State may expand or narrow the applicability of this fee. The State shall provide thirty (30) written notice prior to exercising or changing this option. The contractor shall summarize all sales, along with all assessed Administrative Fee amounts within their Usage Report, including total amounts for the following:

- Total sales receipts from State agencies, boards and commissions;
- Total sales receipts from members of the State Purchasing Cooperative; and
- Total Administrative Fee amount based on one percent (1.0%) of the sales receipts from members of the State Purchasing Cooperative.

2. Submission of Reports and Fees:

Within thirty (30) days following the end of the quarter, the contractor submits their Usage Report and if applicable, a check in the amount of one percent (1%) of their sales receipts from members of the State Purchasing Cooperative, to the Department of Administration, State Procurement Office. Contractors are required to use the State's current report templates unless you have authorization from your contract officer to use a different format. You need to complete Form 799, which is a cover letter that gives the totals of your transactions; and Form 801, which is an Excel spreadsheet that details your transactions. Sales to state agencies and the cooperative members are to be totaled separately. The most current forms can be downloaded at <https://spo.az.gov/statewide-contracts-administrative-fee>.

4.1 The submission schedule for Administrative Fees and Usage reports shall be as follows:

FY Q1, July through September Due October 31

FY Q2, October through December Due January 31

FY Q3, January through March Due by April 30

FY Q4, April through June Due by July 31

2.2 Usage Reports and any questions are to be submitted by email to the state's designated usage report email address: usage@azdoa.gov

3. Administrative Fee

The Administrative Fee shall be a part of the Contractor's unit prices and is not to be charged directly to the customer in the form of a separate line item. Statewide contracts shall not have separate prices for State Agency customers and State Purchasing Cooperative customers.

4. Contractor's failure to remit administrative fees

Contractor's failure to remit administrative fees in a timely manner consistent with the contract's requirements may result in the State exercising any recourse available under the contract or as provided for by law.

J. Compensation

Should the Contractor fail to provide all required services or deliver work products, as agreed upon by State and the Contractor, the State shall be entitled to invoke applicable remedies, including but not limited to, withholding payment to the Contractor and declaring the Contractor in material breach of the Contract. If the Contractor is in any manner in default of any obligation or the Contractor's work or performance is determined by the State to be defective, sub-standard, or if audit exceptions are identified, the State may, in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default, defect, exception or sub-standard performance. The Contractor shall reimburse the State on demand, or the State may deduct from future payments, any amounts paid for work products or performance which are determined to be an audit exception, defective or sub-standard performance. The Contractor shall correct its mistakes or errors without additional cost to the State. The State shall be the sole determiner as to defective or sub-standard performance.

The Contractor shall fulfill their contractual requirements including the Deliverables identified in the Statement of Work and fulfill the roles and responsibilities described in the Statement of Work for a firm fixed price, inclusive of travel and travel-related expenses. The fixed amount shall be inclusive of any fees for the use of any third party products or services required for use in the performance of this Contract.

K. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

L. Indemnification and Insurance

- 1.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, and any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, costs, losses, or expenses, (including reasonable attorney's fees), (hereinafter collectively referred to as "Claims") arising out of actual or alleged bodily injury or personal injury of any person (including death) or

loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of Contractor's directors, officers, agents, employees, volunteers or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all Claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. This indemnification will survive the termination of the above listed contract with the Contractor.

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

1.2 Insurance Requirements

1.2.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1.2.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

1.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.

1.3.1 Commercial General Liability (CGL) – Occurrence Form Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Each Occurrence	\$1,000,000

- a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor
- b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

1.3.2 Business Automobile Liability

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

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

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

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

1.3.3 Workers' Compensation and Employers' Liability

- ☐ Workers' Compensation Statutory
- ☐ Employers' Liability
- ☐ Each Accident \$1,000,000
- ☐ Disease – Each Employee \$1,000,000
- ☐ Disease – Policy Limit \$1,000,000

- d. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- e. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

1.3.4 Technology Errors & Omissions Insurance

☐ Each Claim	\$2,000,000
☐ Annual Aggregate	\$2,000,000

- f. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.
- g. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.
- h. In the event that the Tech E&O insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years, beginning at the time work under this Contract is completed.

1.3.5 Media Liability Coverage

☐ Each Claim	\$2,000,000
☐ Annual Aggregate	\$2,000,000

- i. Such insurance shall cover any and all errors and omissions or negligent acts in the production of content, including but not limited to plagiarism, defamation, libel, slander, false advertising, invasion of privacy, and infringement of copyright, title, slogan, trademark, service mark and trade dress.
- j. In the event that the Media Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be

exercised for a period of two (2) years beginning at the time work under this Contract is completed.

1.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

1.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

1.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract

1.5 Notice of Cancellation

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

1.6 Acceptability of Insurers

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

1.7 Verification of Coverage

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

1.7.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

1.7.2 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

1.8 Subcontractors

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

1.9 Approval and Modifications

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

1.10 Exceptions

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

P. Data Privacy/Security Incident Management

Contractor and its agents shall cooperate and collaborate with appropriate State personnel to identify and respond to an information security or data privacy incident, including a security breach.

1. Threat of Security Breach

Contractor(s) agrees to notify the State Chief Information Officer (CIO), the State Chief Information Security Officer (CISO) and other key personnel as identified by the State of any perceived threats placing the supported infrastructure and/or applications in danger of breach of security. The speed of notice shall be at least commensurate with the level of threat, as perceived by the Contractor(s). The State agrees to provide contact information for the State CIO, CISO and key personnel to the Contractor(s).

2. Discovery of Security Breach

Contractor agrees to immediately notify the State CIO, the CISO and key personnel as identified by the State of a discovered breach of security. The State agrees to provide contact information for the State CIO, the CISO and key personnel.

Q. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to all policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (A.R.S.) §28-447, §28-449, §38-421, §13-2408, §13-2316, §41-770.

Failure of the Contractor, its agents or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and / or federal laws.

Any and all recovery or reconstruction costs or other liabilities associated with an unlawful breach or harmful access shall be paid by the Contractor.

R. Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement

1. The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.”)
2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the

Contractor may be subject to penalties up to and including termination of the Contract.

3. Failure to comply with a State audit process to randomly verify the employment records of Contractors and subcontractors shall be deemed a material breach of the Contract and the Contractor may be subject to penalties up to and including termination of the Contract.
4. The State Agency retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph One(1).

7.2 State of Arizona Uniform Terms and Conditions

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4. *"Contractor"* means any person who has a Contract with the State.
- 1.5. *"Days"* means calendar days unless otherwise specified.
- 1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

- 1.9. *“Procurement Officer”* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10. *“Services”* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11. *“Subcontract”* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12. *“State”* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13. *“State Fiscal Year”* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1. Special Terms and Conditions;
 - 2.3.2. Uniform Terms and Conditions;
 - 2.3.3. Statement or Scope of Work;
 - 2.3.4. Specifications;
 - 2.3.5. Attachments;
 - 2.3.6. Exhibits;
 - 2.3.7. Documents referenced or included in the Solicitation.
- 2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

- 2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

- 3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized

Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

- 3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating

to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.

Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

- 4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. IRS W9 Form. In order to receive payment, the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of thisContract.
- 4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
 - 4.5.1. Accept a decrease in price offered by the contractor;
 - 4.5.2. Cancel the Contract; or
 - 4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

- 5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's

proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

- 5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

- 6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2. Indemnification
 - 6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
 - 6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

- 6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

- 7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the materials are used;
- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6. Survival of Rights and Obligations after Contract Expiration or Termination.
- 7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

- 8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Stop Work Order.
 - 8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its

rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

- 9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

- 9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State.

In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

- 9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

- 9.6. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

STATE OF CALIFORNIA - ADDITIONAL TERMS

Terms and conditions listed below will be incorporated and made a part of California Participating Addenda. The State of California reserves the right to add additional terms and conditions to individual Participating Addenda.

A. Terms

- 1) General Provisions – Information Technology (GSPD-401IT) effective 9/5/2014. This document can be viewed on the [DGS Procurement Division website](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language) (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language>).

B. Administrative Fee

Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to 1.25% of the sales for the quarterly period.

Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

Administrative fee checks shall be submitted to:

State of California
Department of General Services, Procurement Division
Attention: Cooperative Agreement Payment Processing
707 3rd Street, 2nd Floor, MS 2-202
West Sacramento, CA 95605

The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.

The administrative fee shall not be invoiced or charged to the ordering agency.

Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

Administrative fee checks are due for each quarter as follows:

Reporting Period	Due Date
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of the Participating Addendum.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

Master Agreement #: **enter number** (hereinafter "Master Agreement")

Contractor: **enter NAME (Contractor)** (hereinafter "Contractor")

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

State of Hawaii, State Procurement Office (SPO) Price List Contract No. insert VL/PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number **insert contract number** with **insert contractor name**.

1. Scope: This addendum covers the **[contract title]** led by the State of **[xxxxxx]** for use by state agencies and other entities located in the Participating State of Hawaii authorized by that 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. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Name
Address:	Address
Telephone:	Phone
Fax:	Fax
Email:	email

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

Participating State

Name:	Name of Purchasing Specialist
Address:	State Procurement Office 1151 Punchbowl Street, Room 416 Honolulu, HI 98613
Telephone:	Phone Number
Fax:	(808) 586-0540
Email:	Purchasing Specialist E-mail Address

4. Participating State Modifications or Additions to the Master Agreement: These modifications or additions apply only to actions and relationships within the Participating State and its Entities.

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

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 3 (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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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 <https://spo.hawaii.gov/wp-content/uploads/2017/12/AG-008-103D-1.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.
- 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.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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 Contractor 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.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

I. Licensing

Contractors must be properly licensed and capable of performing the Work as described in the Master Agreement, 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.

J. 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. Use as applicable.

Cyber Liability covering claims and losses with respect to network, internet (Cloud) or other data disclosure risks (such as data breaches, releases of Confidential

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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. – use as applicable

Each insurance policy required by this contract (with the exception of the Professional Liability policy-use as applicable), 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.

5. Lease Agreements: Leasing is not authorized by this Addendum. **Adjust as applicable.**
6. Subcontractors: All contactors, dealers, and resellers authorized in the State of **insert Lead State**, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Subcontractors are **(or are not)** allowed under this Addendum.

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. **add number** and the NASPO ValuePoint Master Agreement Number **add number**.

Purchase Orders and Payments shall be made to add **contractor name** or authorized subcontractors, if any.

Invoices and Payment Instructions:

Contractor(s) shall forward original invoice(s), directly to the ordering agency. The GET or use tax and county surcharge may be added to the invoice as a separate line item and shall not exceed the current max pass-on tax rate(s) for each island.

County surcharges on state general excise (GE) tax or Use tax may be visibly passed on but is not required. For more information on county surcharges and the max pass-on tax rate, please visit the Department of Taxation's website at <http://tax.hawaii.gov/geninfo/countysurcharge>.

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.

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

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

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

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: Bonnie Kahakui	Name:
Title: Acting Administrator, SPO	Title:
Date:	Date:

INSERT PORTFOLIO TITLE HERE

Led by the State of **insert State**

APPROVED AS TO FORM:

Deputy Attorney General

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Name
Telephone:	Phone
Email:	email

[Please email fully executed PDF copy of this document to

PA@naspovaluepoint.org

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

Cooperative Participation

State of Illinois Specific Terms and Conditions

1. This participating agreement executed by the State of Illinois may be designated as available to all or certain governmental units and/or qualifying not for profit agencies. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any participating agreement, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This participating agreement and all related public records maintained by, provided to, or required to be provided to the State, are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any participating agreement executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any participating agreement, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any participating agreement must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any participating agreement. The State of Illinois does not waive sovereign immunity.
6. Illinois may further evaluate the lead entity's awarded contracts to make best value determinations.
7. Registration in the Illinois Procurement Gateway is required before a participating agreement with the State of Illinois may be executed. For information on registration, please visit www.ipg.vendorreg.com.
8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy [Vendor Registration Manual](#).
9. Any vendor with a participating agreement may be required to meet a Illinois Business Enterprise Program goal (30 ILCS 575/).

Title 21 STATE PROCUREMENT REGULATIONS

Subtitle 07 CONTRACT TERMS AND CONDITIONS

Chapter 01 Mandatory Contract Provisions — All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)

Authority: Election Law Article, §§14-101—14-108; General Provisions Article, §§5-101 and 5-503;
State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 16-202, 17-401, 17-402, and 19-114;
Annotated Code of Maryland; Chs. 588, 589, and 630, Acts of 2017

.01 Parties to the Contract.

Mandatory provision for all contracts.

.02 Scope of Contract.

Mandatory provision for all contracts. This provision shall reflect the unilateral right of the State to order in writing changes in the work within the scope of the contract.

.03 Compensation and Method of Payment.

Mandatory provision for all contracts. The contractor's taxpayer identification number consisting of the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations shall be indicated in this clause.

.04 Contract Modifications.

Mandatory provision for all contracts.

.05 Non-Hiring of Officials and Employees.

Mandatory provision for all contracts: "No official or employee of the State of Maryland, as defined under General Provisions Article, §5-101, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract."

.06 Disputes.

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Disputes Clause (short form). "This contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

B. Alternate Disputes Clause (long form).

"(1) This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

(2) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(4) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.

(5) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

(6) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

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(7) The procurement officer shall render a written decision on all claims within 180 days of receipt of the contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.

(8) The procurement officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(9) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

.07 Maryland Law Prevails.

Mandatory provision for all contracts unless otherwise authorized by the Board of Public Works.

.08 Nondiscrimination in Employment.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor agrees:(a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection(a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

.09 Contingent Fee Prohibition.

Mandatory provision for all contracts:

"The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement."

.10 Multi-Year Contracts Contingent Upon Appropriations.

Mandatory provision for all contracts and contract modifications to be effective in more than one fiscal year:

"If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first."

.11 Termination for Default.

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Clause — Termination for Default (short form).

"If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory

performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B."

B. Alternate Clause — Termination for Default (long form).

"(1) The State may, subject to the provisions of paragraph (3) of this regulation, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:(a) If the Contractor fails to perform within the time specified herein or any extension thereof; or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

"(2) In the event the State terminates this contract in whole or in part as provided in paragraph(1) of this clause, the State may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the State for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

"(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

"(4) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

"(5) If this contract is terminated as provided in paragraph(1) of this clause, the State, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer,(a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the State has an interest. Payment for completed supplies delivered to and accepted by the State shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the State and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The State may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

"(6) The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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"(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier."

.12 Termination for Convenience.

A. Except as provided in §B of this regulation, mandatory provision for all contracts. One of the following clauses is preferred:

(1) Alternate Clause — Termination for Convenience (short form).

"The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2)."

(2) Alternate Clause — Termination for Convenience (long form).

"(1) The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

"(2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:

(a) stop work as specified in the Notice of Termination;

(b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;

(c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(d) assign to the State, in the manner, at times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(f) transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State;

(g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;

(h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(i) take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

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The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the State to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the State shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

"(3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one(1) year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

"(4) Subject to the provisions of paragraph (3), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

"(5) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

(a) for completed supplies or services accepted by the State (or sold or acquired as provided in paragraph (2)(g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2)(e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under(i) above); and

(iii) a sum, as profit on(i) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement 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

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and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under(a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5)(a) and (b)(i) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to paragraph (2)(g).

"(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this contract.

"(7) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the procurement officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the State shall pay to the Contractor the following:(a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

"(8) In arriving at the amount due the Contractor under this clause there shall be deducted(a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.

"(9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

"(10) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.

"(11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the State at all reasonable times at the office of the Contractor but without direct charge to the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof."

B. Leases of Real Property.

(1) Inclusion of a termination for convenience clause in a real property lease is discretionary with the Board of Public Works, upon recommendation of the Secretary of General Services.

(2) In recommending the exclusion of a termination for convenience clause in a real property lease, the Secretary shall consider such factors as:

(a) The practicality of including the termination for convenience clause in a lease of real property located in another state or overseas when the demand for property of a particular type or in some particular geographic location is extremely intense, or when the contents of a lease are established by a foreign government and are effectively non-negotiable, or both;

(b) The perception of some landlords that the termination for convenience clause permits the State to unilaterally convert a fixed term lease to a day-to-day lease; or

(c) The prospects that some lending institutions may reject loan requests from landlords owning property that the State might wish to lease but that must be first upgraded at the owner's expense to meet State User Agency Requirements.

.13 Delays and Extensions of Time.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"Delays and Extensions of Time"

"The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

"Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers."

.14 Liquidated Damages.

Mandatory provision for:

- A. All contracts with certified MBE participation goals in accordance with COMAR 21.11.03.10E; and
- B. Any other contracts deemed appropriate by the procurement officer in consultation with the Office of the Attorney General.

.15 Variations in Estimated Quantities.

Mandatory provision for all contracts that contain estimated quantity items.

.16 Suspension of Work.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State."

.17 Pre-existing Regulations.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract."

.18 Payment of State Obligations.

Mandatory provision for all contracts. The following clause is preferred:

"Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

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The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable."

.19 Financial Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland. That section requires a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000."

.20 Political Contribution Disclosure.

Mandatory provision for all contracts:

"The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing:(a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections:(a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before:(i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html."

.21 Retention of Records.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times."

.22 Compliance with Laws.

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor hereby represents and warrants that:

"A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

"B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

"C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

"D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract."

.23 Cost and Price Certification.

Mandatory provision for all contracts and contract modifications (excluding real property leases and architectural services or engineering services contracts (see Regulation .24)) if the contract or modification exceeds \$100,000 or a smaller amount

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determined by the procurement officer under State Finance and Procurement Article, §13-220. The language shall be in substantially the same form as follows:

"Cost and Price Certification"

"A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

"(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

"(2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

"B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current."

.24 Truth-In-Negotiation Certification.

Mandatory provision for architectural services or engineering services contracts exceeding \$100,000. It shall be in substantially the same form as follows:

"Truth-In-Negotiation Certification"

"The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

"A. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

"B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

"C. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs."

.25 Contract Affidavit.

Mandatory contract addendum. The contract addendum shall be in substantially the same form as follows and submitted upon initial award and each renewal thereafter:

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable items):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship

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and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;

(h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program;

and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

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F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

.26 Commercial Nondiscrimination Clause.

A. The following provision is mandatory for all State contracts and subcontracts: "As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The following provision is mandatory for all State contracts: "As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions."

.27 Performance and Payment Bonds.

This regulation is added as a separate pdf form within this chapter.

.27 Performance and Payment Bonds.

Mandatory provision for contracts exceeding \$100,000 with surety bond requirements:

A. Performance Bond. The required performance bond shall be in the form specified as follows:

PERFORMANCE BOND

Principal	Business Address of Principal
Surety a corporation of the State of _____ and authorized to do business in the State of Maryland	Obligee STATE OF MARYLAND
Penal Sum of Bond (express in words and figures)	Date of Contract _____, 20 ____
Description of Contract	Date Bond Executed _____, 20 ____
Contract Number: _____	

KNOW ALL BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the

corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:	Individual Principal
Witness:	
_____ as to	_____ (SEAL)

In Presence of:	Co-Partnership Principal
Witness:	
_____	_____ (SEAL)
	(Name of Co-Partnership)
_____ as to	By: _____ (SEAL)
_____ as to	_____ (SEAL)
_____ as to	_____ (SEAL)

	Corporate Principal
Attest:	_____
	(Name of Corporation)
	AFFIX
_____ as to	By: _____ CORPORATE
Corporate Secretary	President SEAL

Attest:	(Corporate Surety)
(SEAL)	By: _____ (SEAL)
Signature	Title _____
Bonding Agent's Name: _____	_____
	(Business Address of Surety)
Agent's Address _____	

Approved as to legal form and sufficiency this
 _____ day of _____ 20____

Asst. Attorney General

B. Payment Bond. The required payment bond shall be in the form specified as follows:

PAYMENT BOND

Principal	Business Address of Principal
Surety	Obligee
a corporation of the State of _____	STATE OF MARYLAND
and authorized to do business in the State of Maryland	
Penal Sum of Bond (express in words and figures)	Date of Contract
_____	_____, 20____
Description of Contract	Date Bond Executed
Contract Number: _____	_____, 20____

KNOW ALL BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other

purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying services or materials (including lessors of equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Oblige that every claimant as herein defined, may sue on this Bond for the use of such claimant and prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Oblige shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:

Individual Principal

Witness:

_____ as to

_____ (SEAL)

In Presence of:

Co-Partnership Principal

Witness:

_____ (SEAL)

(Name of Co-Partnership)

By: _____ (SEAL)

_____ as to

_____ (SEAL)

_____ as to

_____ (SEAL)

_____ as to

	Corporate Principal
Attest:	_____
	(Name of Corporation)
	AFFIX
_____	By: _____ CORPORATE
Corporate Secretary	President SEAL

Attest:	(Corporate Surety)
	By: _____ (SEAL)
_____	Title _____
Signature	
Bonding Agent's Name: _____	_____
	(Business Address of Surety)
Agent's Address _____	

Approved as to legal form and sufficiency this
_____ day of _____ 20____

Asst. Attorney General

.28 Performance and Payment Bonds — Multiyear Annual and Renewable.

This regulation is added as a separate pdf form within this chapter.

.28 Performance and Payment Bonds—Multiyear Annual and Renewable.

Optional forms for multiyear contracts exceeding \$100,000 with annual and renewable surety bonds:

A. Performance Bond. The required performance bond shall be in the form specified as follows:

ANNUAL PERFORMANCE BOND – RENEWABLE FOR MULTIYEAR AWARDS

Principal	Business Address of Principal
Surety a corporation of the State of _____ and authorized to do business in the State of Maryland	Obligee STATE OF MARYLAND
Penal Sum of Bond (express in words and figures) _____	Date Bond Executed _____, 20____ Initial Term Fiscal Year Ending June 30, 20____

KNOW ALL BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a multiyear contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

The term of this Bond is for the period beginning on the date the bond is executed and ending on the indicated Initial Term Fiscal Year Ending Date (the "Initial Term"). If requested by the Principal, the Initial Term may be extended, solely at the option of the Surety, for additional one (1) year periods (each a "Renewal Term"), ending on the subsequent Fiscal Year ending date. This Bond shall expire at the end of the Initial Term or, if extended, at the end of the final Renewal Term. Provided that at any time should the surety elect not to extend the bond for a Renewal Term, it must so inform the Obligee in writing prior to ninety (90) days before the expiry of the existing Initial Term or final Renewal Term. If the surety does not so inform the Obligee of its intention not to extend the bond as stated herein, the bond will automatically be deemed extended for an additional Renewal Term.

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the initial term of said Contract, any renewal term, and during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:	Individual Principal
Witness:	
_____ as to	_____ (SEAL)

In Presence of:	Co-Partnership Principal
Witness:	
_____	_____ (SEAL)
	(Name of Co-Partnership)
_____ as to	By: _____ (SEAL)
_____ as to	_____ (SEAL)
_____ as to	_____ (SEAL)

	Corporate Principal
Attest:	_____
	(Name of Corporation)
	AFFIX
_____ as to	By: _____ CORPORATE
Corporate Secretary	President SEAL

Attest:	(Corporate Surety)
(SEAL)	By: _____ (SEAL)
Signature	Title _____
Bonding Agent's Name: _____	
Agent's Address _____	(Business Address of Surety)

Approved as to legal form and sufficiency this
_____ day of _____ 20 _____

Asst. Attorney General

B. Payment Bond. The required payment bond shall be in the form specified as follows:

ANNUAL PAYMENT BOND – RENEWABLE FOR MULTIYEAR AWARDS

Principal	Business Address of Principal
Surety a corporation of the State of _____ and authorized to do business in the State of Maryland	Obligee STATE OF MARYLAND
Penal Sum of Bond (express in words and figures) _____	Date Bond Executed _____, 20____ Initial Term Fiscal Year Ending June 30, 20____

KNOW ALL BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business address as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a multiyear contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as the "Contract".

The term of this Bond is for the period beginning on the date the bond is executed and ending on the indicated Initial Term Fiscal Year Ending Date (the "Initial Term"). If requested by the Principal, the Initial Term may be extended, solely at the option of the Surety, for additional one (1) year periods (each a "Renewal Term"), ending on the subsequent Fiscal Year ending date. This Bond shall expire at the end of the Initial Term or, if extended, at the end of the final Renewal Term. Provided that at any time should the surety elect not to extend the bond for a Renewal Term, it must so inform the Obligee in writing prior to ninety (90) days before the expiry of the existing Initial Term or final Renewal Term. If the surety does not so inform the Obligee of its intention not to extend the bond as stated herein, the bond will automatically be deemed extended for an additional Renewal Term.

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying services or materials (including lessors of equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and subcontractors in the prosecution of the work provided for in the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Obligee that every claimant as herein defined, may sue on this Bond for the use of such claimant and prosecute the suit to final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of a Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of a Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and

each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: _____ Witness: _____ _____ as to _____	Individual Principal _____ (SEAL)
In Presence of: _____ Witness: _____ _____ as to _____ _____ as to _____ _____ as to _____	Co-Partnership Principal _____ (SEAL) (Name of Co-Partnership) By: _____ (SEAL) _____ (SEAL) _____ (SEAL)
Attest: _____ _____ Corporate Secretary	Corporate Principal _____ (Name of Corporation) AFFIX By: _____ CORPORATE President SEAL
Attest: _____ (SEAL) Signature _____ Bonding Agent's Name: _____ Agent's Address _____	(Corporate Surety) By: _____ (SEAL) Title _____ _____ (Business Address of Surety)

Approved as to legal form and sufficiency this
 _____ day of _____ 20 _____

 Asst. Attorney General

STATE PROCUREMENT REGULATIONS

21.07.01.28

Administrative History

Effective date: July 1, 1981 (8:13 Md. R. II-5)

Regulation .09A amended effective May 6, 1985 (12:9 Md. R. 816)

Chapter revised effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .03 amended effective August 2, 1993 (20:15 Md. R. 1221)

Regulation .05 amended effective October 2, 2000 (27:19 Md. R. 1730); July 9, 2001 (28:13 Md. R. 1216)

Regulation .08 amended effective December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .11A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .12A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .14 amended effective May 13, 2013 (40:9 Md. R. 789); July 15, 2019 (46:14 Md. R. 623)

Regulation .18 amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .19 amended effective March 11, 2019 (46:5 Md. R. 310)

Regulation .20 amended effective January 26, 1998 (25:2 Md. R. 79); December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .25 amended effective October 1, 1990 (17:19 Md. R. 2322); August 2, 1993 (20:15 Md. R. 1221); August 8, 2011 (38:16 Md. R. 946); May 13, 2013 (40:9 Md. R. 789)

Regulation .25C amended effective March 11, 2019 (46:5 Md. R. 310)

Regulation .25D amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26 adopted as an emergency provision effective August 8, 1997 (24:18 Md. R. 1294); emergency status rescinded effective October 16, 1997 (24:23 Md. R. 1608)

Regulation .26 adopted effective March 12, 2007 (34:5 Md. R. 562)

Regulation .26A amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26B amended effective March 5, 2012 (39:4 Md. R. 338)

Regulation .27 adopted effective July 15, 2019 (46:14 Md. R. 623)

Regulation .28 adopted effective July 15, 2019 (46:14 Md. R. 623)

Maryland State Admin Fee: Estimated at 1%, but any fee will be determined at such time Maryland may elect to negotiate any Participating Addendum.

**STATE OF TENNESSEE PARTICIPATING ADDENDUM
TO NASPO RFP AZ-BPM003137
MAILING EQUIPMENT, SUPPLIES, AND MAINTENANCE**

A. SCOPE: This State of Tennessee Participating Addendum (hereinafter "Contract") by and between the State of Tennessee ("hereinafter "State") and **Company(ies)** (hereinafter "Contractor") is for the provision of Mailroom Equipment, Supplies and Maintenance.

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

B. TERM OF CONTRACT:

The term of this Participating Addendum will be effective upon the final execution date by the Participating State and co-terminus with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State. Lead State amendments to extend the term date shall be incorporated into this Participating Addendum upon approval by the Participating State.

Special note regarding Term of Contract. The NASPO ValuePoint term is a one (1) year contract term ending **DATE**, with four (4) additional one-year options to renew. No new leases will be entered beyond the end of year five (5) (**DATE**) from the resulting contract. The remaining five (5) years of the Edison statewide contract will allow agencies to complete the existing lease terms.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be four million seven hundred thirty-five thousand five hundred dollars (\$4,735,500.00) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for three hundred sixty-five (365) days ("Firm Price Period").

a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

b. Price Increases. After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.

c. Approval of Price Changes. The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total

amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

State Agency Billing Address

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: **State Agency & Division Name;**
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in

accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Mr. Erik Busby, Category Specialist
Central Procurement Office
Tennessee Tower, 3rd Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243
Erik.Busby@tn.gov
Telephone # 615-253-8900
FAX # 615-741-0684

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least sixty (60) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any

other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

D.11. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.12. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.14. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.15. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.16. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.17. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.18. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.19. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.21. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.22. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this

Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.23. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.24. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.25. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will

not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.26. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.27. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.28. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.29. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.30. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.31. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the NASPO solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.32. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.33. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and

omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

- a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims,

errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- D.34. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.35. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

- E.2. Statewide Contract. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):
- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
 - b. Tennessee local governmental agencies;
 - c. members of the University of Tennessee or Tennessee Board of Regents systems;
 - d. any private nonprofit institution of higher education chartered in Tennessee; and,
 - e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

- E.3. Statewide Contract Reports. All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

- a. Quarterly Reports: Contractor(s) will submit quarterly reports to the Contract Administrator no later than thirty (30) days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than January 30th). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by Tennessee State Agencies and Authorized Users. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. Edison contract number
2. Contract line item number
3. Invoice date
4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency or Authorized User
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

- b. Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

- E.4. State of Tennessee Administrative Fee. A one percent (1%) administrative fee will be included in the cost of all goods and/or services purchased under this Contract. This one percent (1%) administrative fee will be rebated back to the State of Tennessee based on quarterly contract

usage of all Authorized Users. The administrative fee is due to the State no later than sixty (60) days after the end of the specified reporting period, as detailed below:

Calendar Quarter 1 (Jan 1-Mar 31)
Calendar Quarter 2 (Apr 1-June 30)
Calendar Quarter 3 (July 1-Sep 30)
Calendar Quarter 4 (Oct 1-Dec 31)

Contractor shall submit payments to:
Ron Plumb, Director of Financial Management
Department of General Services
22nd Floor, William R Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

Contract usage reports shall be submitted to:
Contract Administrator
Department of General Services
3rd Floor, William R. Snodgrass, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243
Email: CPO.SWC@tn.gov

- E.5. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.6. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.7. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.8. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.9. Prison Rape Elimination Act (PREA). The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

E.10. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.11. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to this Participating Addendum (Attachment 2) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

E.12. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

E.13. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either

as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

- E.14. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

- E.15. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:

- i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.16. Clean Air Act and Federal Water Pollution Control Act. If applicable, and as a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 et

seq. and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to FEMA and the Region 4 Office of the Environmental Protection Agency.

- E.17. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.
- E.18. Procurement of Recovered Materials. If applicable:
- a) In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
 - b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive.
 - c) Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - d) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
- E.19. Access to Records. If FEMA funds are used in whole or in part:
- a) The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for purposes of making audits, examinations, excerpts, and transcriptions.
 - b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - d) In Compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit the audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- E.20. Use of DHS Logo. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- E.21. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- E.22. Compliance with The False Claims Act. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- E.23. 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, contractor, or any other party pertaining to any matter resulting from the Contract.
- E.24. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

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

E.25. Contractor Hosted Services Confidential Data, Audit, and Other Requirements.

- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
 - (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the

Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[number of hours/minutes]**
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[number of hours/minutes]**
 - (2) The Contractor and any Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production

data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- E.26. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).
- E.27. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- E.28. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. If applicable and as required by 2 CFR 200.216, Contractor is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. As described in Public Law 115-232, Section 889, "covered telecommunications equipment" is as follows:
- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, 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).
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE, CENTRAL PROCUREMENT OFFICE:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8).

"Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

"Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215> directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? ☐ Yes ☐ No		
If yes, which designation does the Respondent qualify? ☐ MBE ☐ WBE ☐ DSBE ☐ SDVBE ☐ SBE		
Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____ Date: _____

Printed Name and Title of Signatory _____

ADDITIONAL REQUIREMENTS

to the
Participating Addendum
to the
NASPO ValuePoint Cooperative Purchasing Organization
Mailing Equipment, Supplies and Maintenance Contract

1. Training

- a. Training shall include:
 - i. Complete orientation of all of the equipment's features, functions, and capabilities.
 - ii. "Hands On" training in the operation of the machine by demonstration and use.
 - iii. Complete instruction on the replacement of the equipment's consumable supplies, including toner, paper, fuser oil, binder tape, staples, and any other items that are replaced by the employee.
 - iv. Troubleshooting of the equipment, including jam clearance and identification of codes and/or symbols used to diagnose problems.
 - v. Process to identify equipment that needs a technician's services and the method of notification to a qualified service technician.
 - vi. Review of system documentation, electronic or hardcopy.

2. Lease/Rental/Purchase Options and Extensions

- a. The Contractor shall, at a minimum, allow the following:
 - 36 Month lease with Fair Market Value Option at end of term
 - 48 Month lease with Fair Market Value Option at end of term
 - 60 Month lease with Fair Market Value Option to end of term
 - 36 Month Installment Purchase
 - 48 Month Installment Purchase
 - 60 Month Installment Purchase
 - Outright Purchase
- b. The Contractor may offer provisions for a coterminous lease to the Commonwealth in addition to the listed financing options. The coterminous lease will allow agencies to acquire an accessory or new technology and have it added to an existing product during the life of the existing lease. A coterminous lease may not be used for additional stand-alone equipment.

Example: If an agency would acquire an upgrade for a piece of equipment 14 months into an existing 60-month lease, the Coterminous Lease payments will end in 46 months and will be listed separately on the lease schedule.

- c. System leases may not be renewed via this contract. Agencies must either exercise their purchase option or notify the Contractor at least sixty (60) days prior to the expiration of the lease to have the equipment removed.
- d. Month to Month extension of a lease for up to three (3) months will be allowed by mutual consent of the Contractor and the using agency.
- e. In the event an agency wishes to have the equipment removed prior to the end of the lease, the Contractor shall not invoice for other fees except what is owed on the remainder of the lease.

3. Equipment Performance & Replacement

- a. The equipment must perform in an efficient manner with a minimum of downtime. If equipment requires five (5) service calls for any service issues within a 60-day rolling time period, the Contractor will be required to report this to the Department of General Services for review. If the Department of General Services determines that a using agency's system requires replacement, the Contractor, after written notification from the agency, will replace the equipment without charge with an identical model or equipment with comparable features and capabilities. This policy shall apply to all equipment leased or purchased under this Contract and is in effect for the duration of the Contract. If leased equipment is replaced, a new lease term shall not commence but rather the Commonwealth shall only be responsible for the remaining payments in the unexpired term. If the Department of General Services determines the cause of excessive service calls are due to operator error, misuse, or abuse, the calls will not be counted against the five (5) service call limit and will not be a factor in determining satisfactory machinery performance. If equipment is replaced due to performance issues the equipment will be covered under the standard warranty clause included in the Terms and Conditions.

4. Maintenance & Service Calls

- a. A schedule for preventative maintenance is required for each piece of equipment. The using agency will indicate on its purchase order all equipment that requires a preventative maintenance schedule.
- b. Maintenance shall cover all calls initiated between the hours of 6 AM and 5 PM Monday through Friday EST except holidays. Service calls outside these specified normal business hours may carry a per call charge as well as an hourly surcharge. The Contractor must notify the using Agency of the additional charge if they request an after hours service call.

Examples:

A service call initiated at 3:00 PM and finished at 5:30 PM *shall not* be subject to an after hours charge if the Agency has accommodated the desire of the Contractor to finish the service call.

A service call initiated at 9:00 PM on Friday at the request of the Agency will be subject to the after hours charge and the Contractor must notify the Agency of the additional charge.

5. Trade-Ins

- a. The Commonwealth reserves the right to offer used equipment in trade as part of the purchase price, in accordance with values in effect at the time traded.
- b. The Commonwealth represents trade-in equipment only "as is" and no warranty as to its condition is expressed or inferred. Equipment for trade-in is removed by the Contractor at their expense from the location indicated in the Agency's purchase order.
- c. Agencies exercising a trade-in option must follow all procurement policies for the disposal of Commonwealth owned assets.

PART I - GENERAL INFORMATION
PART I - GENERAL INFORMATION

I.1 IFB-027.1 COSTARS Program (January 2017)

COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:
 - Any political subdivision (local government unit), such as a municipality, school district, or commission.
 - Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code).
 - Any tax-exempt, nonprofit educational institution or organization.
 - Any tax-exempt, nonprofit public health institution or organization.
 - Any nonprofit fire, rescue, or ambulance company; and
 - Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:
 - The Pennsylvania Turnpike Commission.
 - The Pennsylvania Housing Finance Agency.
 - The Pennsylvania Municipal Retirement System.
 - The Pennsylvania Infrastructure Investment Authority.
 - The State Public School Building Authority.
 - The Pennsylvania Higher Education Facilities Authority, and
 - The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>

B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.

C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.

D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor's classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1,500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.

2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to "Commonwealth of PA". The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

F. DGS has registered the COSTARS name and logo (together, the "COSTARS Brand") as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.

2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

- a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
- b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
- c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
- d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
- e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
- f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due

process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.

3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently registered COSTARS member entities, please visit the COSTARS website.

2. Direct all questions concerning the COSTARS Program to:

Department of General Services COSTARS Program
555 Walnut Street, 6th Floor Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@pa.gov

I.2 IFB-028.1 Participating Addendum with an External Procurement Activity (Dec 6, 2006)

Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. Section 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

a. **Definitions.** The following words and phrases have the meanings set forth in this provision:

- 1) *External procurement activity*: The term, as defined in 62 Pa. C. S. Section 1901, means a 'buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. Section 1901]. An agency of the United States is an external procurement activity.'
- 2) *Participating addendum*: A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
- 3) *Public procurement unit*: The term, as defined in 62 Pa. C. S. Section 1901, means a 'local public procurement unit or purchasing agency.'
- 4) *Purchasing agency*: The term, as defined in 62 Pa. C. S. Section 103, means a 'Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another

Commonwealth agency.'

b. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from this IFB. The Contractor shall not be required to enter into any participating addendum.

c. **Additional Terms.**

- 1) A participating addendum may include additional terms that are required by the law governing the external procurement activity.
- 2) A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
- 3) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.
- 4) If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

d. **Prices.**

- 1) **Price adjustment** For any costs affecting the percent markup that the Contractor will or will not incur or that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:

- a) State and local taxes.
- b) Unemployment and workers compensation fees.
- c) E-commerce transaction fees; and
- d) Costs associated with additional terms, established pursuant to the Contract.

- 2) The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. Any price or rate adjustment shall be within the confines of the awarded contract, or as negotiated in service to this Contract. Any price or rate adjustment requested must not exceed the Producers Price Index (PPI) by Industry: Other Commercial and Service Industry Machinery Manufacturing: Mailing, Letter Handling, and Addressing Machines, Except Parts and Attachments, Series ID: PCU3333183333183A at time of requested adjustment. Any negotiated price adjustments for this Contract shall be documented via a bilateral Contract Amendment.

e. **Usage Reports on External Procurement Activities.**

The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be emailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the external procurement activity that has used the Contract, and the total volume of sales to the external procurement activity for the reporting period.

f. **Electronic Copy of Participating Addendum.** The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

I.3 IFB-029.1 Prices (Dec 6, 2006)

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

I.4 IFB-030.1 Approved Equal (Nov 2006)

Whenever an item is defined in this IFB by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A Bidder quoting on a product other than the referenced product shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

I.5 IFB-031.1 Alternates (Oct 2013)

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award. If an item or items in the IFB are designated "no substitute," this provision does not apply, and no alternate may be proposed by a bidder, nor will any alternate be considered by the Issuing Office.

I.6 IFB-032.1 New Equipment (Nov 2006)

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that will be used first by the Commonwealth after it is manufactured or produced. A 'remanufactured' product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product is new or remanufactured.

PART II - REQUIREMENTS

PART II - REQUIREMENTS

II.1 IFB-006.1b COSTARS Program Election to Participate (July 2012)

If the bidder is willing to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to COSTARS members, the bidder should complete and return the COSTARS Program Election to Participate form which is an attachment to this IFB. If the bidder is asserting that it is a Department of General Services Certified Small Business, the bidder must submit its active certification with the bid response.

II.2 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006).

With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. Offerors must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this IFB. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Bid Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

II.3 II-IFB-016.1 Post-Submission Descriptive Literature (Dec 2006)

The Commonwealth may, during its evaluation of the bids, require any bidder to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

II.4 II-IFB-017.1b Reciprocal Limitations Act – Electronic Submittal (February 2007)

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted as part of the Bid Response.

II.5 II-IFB-018.1b Iran Free Procurement Certification and Disclosure – Electronic Submittal (November 2016)

Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a bidder must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All bidders must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this IFB. The completed and signed Iran Free Procurement Certification form must be submitted with the Bid Response.

See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJ>

PART III - CONTRACT TERMS and CONDITIONS

PART III - CONTRACT TERMS and CONDITIONS

V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

The Contract with the awarded bidder (who shall become the "Contractor") shall include the following terms and conditions:

V.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)

The initial term of the Contract shall be 05 year(s) and 00 month(s).

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective Date shall be a) the Effective Date printed on the Contract after the Contract has been fully executed by the Commonwealth (signed and approved as required by the Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

V.3 CONTRACT-002.3 Extension of Contract Term (Nov 30, 2006)

The Commonwealth reserves the right, upon notice to the Contractor, to extend any single term of the Contract for up to three (3) months upon the same terms and conditions.

V.4 CONTRACT-003.1a Signatures – Contract (July 2015)

The Contract shall not be a legally binding contract until the fully executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be electronically signed by the Commonwealth. The electronically printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appear to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

V.5 CONTRACT-004.1a Definitions (Oct 2013)

As used in this Contract, these words shall have the following meanings:

- a. Agency: The department, board, commission, or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean calendar days.
- d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- f. Services: All Contractor activity necessary to satisfy the Contract.

V.6 CONTRACT-005.1a Purchase Orders (July 2015)

Commonwealth agencies may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders may be electronically signed by the Agency. The electronically printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

- a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

V.7 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

V.8 CONTRACT-007.01a Supplies/Service Delivery (Nov 30, 2006)

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within forty-five (45) days after the Effective Date.

The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

V.9 CONTRACT-007.02 Estimated Quantities (Nov 30, 2006)

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

V.10 CONTRACT-008.1a Warranty. (Oct 2006)

The Contractor warrants that all items furnished, and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

V.11 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the Commonwealth under the contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall bear the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

V.12 CONTRACT-009.1d Ownership Rights (Oct 2006)

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

V.13 CONTRACT-010.1a Acceptance (Oct 2006)

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The Commonwealth shall notify the Contractor of the nature of the non-conformity in writing. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective at no cost to the Commonwealth. If the Contractor fails, neglects, or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

V.14 CONTRACT-010.2 Product Conformance (March 2012)

The Commonwealth reserves the right to require any and all Contractors to:

1. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.

4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location.

V.15 CONTRACT-010.3 Rejected Material Not Considered Abandoned (March 2012)

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

V.16 CONTRACT-011.1a Compliance With Law (Oct 2006)

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

V.17 CONTRACT-013.1 Environmental Provisions (Oct 2006)

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to: the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. Section 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. Section 6018.101 et seq. ; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended , 32 P.S. Section 693.1.

V.18 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> .

V.19 CONTRACT-014.3 Recycled Content Enforcement (February 2012)

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

V.20 CONTRACT-015.1 Compensation (Oct 2006)

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

V.21 CONTRACT-.15.1A Compensation/Expenses (Oct 2013)

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

V.22 CONTRACT-015.2 Billing Requirements (July 2021)

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- Vendor name and "Remit to" address, including SAP Vendor number.,
- SAP Purchase Order number,
- Delivery Address, including name of Commonwealth agency,
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible),
- Quantity provided,
- Unit price,
- Price extension, and
- Total price.
- Delivery date of supplies or services, as applicable.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice. Contractor will bill the Commonwealth for the products once the products are delivered by Quadient to the shipping carrier selected by the Contractor.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

V.23 CONTRACT-016.1 Payment (Oct 2006)

(a) The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post-payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay, and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor, or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

V.24 CONTRACT-016.2 Payment – Electronic Funds Transfer (July 2022)

a. The Commonwealth will make contract payments through Automated Clearing House (ACH). Within 10 days of the award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).

b. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.

c. It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

V.25 CONTRACT-017.1 Taxes (Dec 5, 2006)

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required, and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

V.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

V.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30, 2006)

a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third-party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

V.28 CONTRACT-020.1 Audit Provisions (Oct 2006)

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

V.29 CONTRACT-020.2 Single Audit Act of 1984 (Oct 2013)

In compliance with the *Single Audit Act of 1984*, the Contractor agrees to the following:

a. This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in *Government Auditing Standards*, 1994 Revisions (Yellow Book).

b. The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, 31 U.S.C. Section 7501, *et seq.* and all rules and regulations promulgated pursuant to the Act.

c. The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed

necessary.

The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*.

V.30 CONTRACT-021.1 Default (Oct 2013)

a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor and the same has not been cured within 30 days, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified.
- 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms.
- 3) Unsatisfactory performance of the work.
- 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified.
- 5) Improper delivery.
- 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order.
- 7) Delivery of a defective item.
- 8) Failure or refusal to remove material or remove and replace any work rejected as defective or unsatisfactory.
- 9) Discontinuance of work without approval.
- 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so.
- 11) Insolvency or bankruptcy.
- 12) Assignment made for the benefit of creditors.
- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered.
- 14) Failure to protect, to repair, or to make good any damage or injury to property.
- 15) Breach of any provision of the Contract.
- 16) Failure to comply with representations made in the Contractor's bid/proposal; or
- 17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the

Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

V.31 CONTRACT-022.1 Force Majeure (Oct 2006)

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The parties agree that Contractor will provide the Commonwealth an estimated ship date for the product(s) and will notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware or should have reasonably become aware that such cause would prevent or delay its performance, if any of the products are delayed and the adjusted estimated time for delivery. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

V.32 CONTRACT-023.1a Termination Provisions (Oct 2013)

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest upon 90 days prior written notice to Contractor. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred

but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose. The Commonwealth shall not terminate for non-appropriation in an effort to obtain the same or similar services or materials from another party.

c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.33 CONTRACT-024.1 Contract Controversies (Oct 2011)

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

V.34 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity, except those listed as authorized dealers or resellers in the participating addendum, to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift,

assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

V.35 CONTRACT-026.1 Other Contractors (Oct 2006)

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

V.36 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (August 2018)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.

4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.

6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The Contractor and each subcontractor represent that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination

and sexual harassment. The Contractor and each subcontractor further represent that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

V.37 CONTRACT-028.1 Contractor Integrity Provisions (January 2015)

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.

d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. **"Financial Interest"** means either:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the 4 Pa. Code §7.153(b), shall apply.

g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees, and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction.

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency.

(3) had any business license or professional license suspended or revoked.

(4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

(5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

g. When contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices, or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of anyone shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

V.38 CONTRACT-029.1 Contractor Responsibility Provisions (July 2021)

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations or has filed a timely administrative or judicial appeal if such liabilities or obligations exist or is subject to a duly approved deferred payment plan if such liabilities exist.

3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the

Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

6. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

V.39 CONTRACT-030.1 Americans with Disabilities Act (July 2021)

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

- 1 Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
- 2 The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

V.40 CONTRACT-031.1 Hazardous Substances (April 2017)

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 - 323.6.

a. Labeling. The Contractor shall ensure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (1) through (4):

- 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and

- c) The name, address, and telephone number of the manufacturer.
- 2) Hazardous mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture, A hazard warning, and
 - d) The name, address, and telephone number of the manufacturer.
- 3) Single chemicals:
 - a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

V.41 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

V.42 CONTRACT-033.1 Applicable Law (Oct 2006)

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts.

The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

V.43 CONTRACT- 034.1b Integration (Nov 30, 2006)

This Contract, including the Invitation for Bids, the Contractor's bid, all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

V.44 CONTRACT-034.2b Order of Precedence - IFB (Dec 6, 2006)

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the IFB; and the Contractor's Bid in Response to the IFB.

V.45 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only.

Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

V.46 CONTRACT-035.1a Changes (Oct 2006)

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change

order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Contract Controversies Provision.

V.47 CONTRACT-036.1 Background checks (February 2016)

a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.

b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.

d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

V.48 CONTRACT-037.1a Confidentiality (Oct 2013)

(a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

(b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- (1) already known to the recipient at the time of disclosure other than through the contractual relationship.
- (2) independently generated by the recipient and not derived by the information supplied by the disclosing party.

- (3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information.
- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

(c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

- (1) Prepare an un-redacted version of the appropriate document, and
- (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
- (3) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets.
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- (4) Submit the two documents along with the signed written statement to the Commonwealth.

V.49 CONTRACT-042.1 Installment Purchase Additional Terms and Conditions (Oct 2013)

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Purchaser") the option to pay for any items covered by the Contract in installments over time, these Installment Purchase Terms And Conditions shall, in addition to the other terms and conditions of the Contract, govern the installment purchase, except to the extent the Contractor assigns an Installment Purchase to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Installment Purchase Terms and Conditions. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the PO issued to the Contractor ("Installment Purchase PO"). By issuing an Installment Purchase PO, the Purchaser explicitly agrees to these Installment Purchase Terms and Conditions. Any items covered by an Installment Purchase shall be called "Installment Items" in these Installment Purchase Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Installment Purchase Terms and Conditions, these Installment Purchase Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase option.

A. Term of Installment Purchase

The Contractor may provide any Installment Items under the Contract for any term up to 60 months. The Purchaser shall identify the term selected on the Installment Purchase PO. The Installment Purchase term shall commence on the date the Purchaser accepts the Installment Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Installment Purchase PO. The form of the Acceptance Certificate can be found on the Forms page of the Department of General Services' webpage (www.dgs.state.pa.us).

If the Contractor delivers the Contract items in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Purchaser will provide separate acceptance certificates for each delivery of the items, and the Purchaser will make separate payments for the Contract items corresponding to the amount of Contract items delivered and accepted 30 days prior to the payment due date.

B. Payments

1. Full Term Intention. The Purchaser shall pay the applicable monthly payment for the Installment Items. The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.

2. Non-Appropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Installment Purchase. If sufficient funds are not appropriated for continuation of performance under any Installment Purchase for any fiscal year subsequent to the one in which the Purchaser issued the Installment Purchase PO, the Purchaser may return the Installment items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Installment Purchase, provided:

- a. The Purchaser delivers unencumbered title to the Installment items to the contractor or Initial Assignee (if applicable);
- b. The Purchaser returns the Installment items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
- c. The Purchaser gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Installment Items are not being replaced by similar items from another vendor. In the event the Purchaser returns the Installment Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Installment Purchase through the end of the fiscal year for which sufficient funds were appropriated for the Installment Purchase. The Commonwealth shall not terminate for non-appropriation in an effort to obtain the same or similar services or materials from another party.

C. Title and Security Interest

1. The title to the Installment Items shall pass to the Purchaser at the time and place of delivery to the Purchaser of each unit of equipment. The Contractor or its Initial Assignee shall have a purchase money security interest in the Installment Items until payment of all installments as set forth in the payment schedule are made, or if the Purchaser prepaids its installments, upon payment of the agreed amount between the Contractor and the Purchaser as set forth in Subsection I of this Section.

- a. Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Installment Items.
- b. The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
- c. At the request of the Contractor or Initial Assignee, the Purchaser will join the Contractor/assignee in executing one or more UCC-1 financing statements.
- d. The Purchaser will keep the Installment Items free and clear of all encumbrances except the Contractor's/assignee's security interest.

D. Use and Location of, And Alteration to Installment Items

The Purchaser shall keep the Installment Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Installment Items. The Purchaser, at its own cost and expense, shall maintain the Installment Items in good operating condition and will not use or deal with the Installment Items in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Installment Items and the Purchaser will not allow the Installment Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Installment Items shall be made without the approval of the Contractor/Initial Assignee.

E. Assumption of Risks

1. The Purchaser shall, after delivery of the Installment Items, assume and bear the risk of damage to, or loss or theft of, the Installment Items (including all component parts) from any cause other than action or inaction of the Contractor/assignee. The loss or damage of the Installment Items shall not impair any obligation of the Purchaser under these Installment Purchase Terms and Conditions, which shall continue in full force and effect. In the event that all or part of the Installment Items shall, as a result of the above-mentioned causes, become, in the Purchaser's reasonable determination, lost, stolen, destroyed, rendered unusable, or irreparably damaged, then the Purchaser shall notify the Contractor/assignee in writing. In the event the products are lost or damaged in transit, then the Commonwealth will notify Contractor within 90 days of delivery of the products to the Commonwealth and Contractor will correct or replace any product that is lost or damaged at delivery at no cost to the Commonwealth. At its option, the Purchaser shall elect either:

- a. to replace the equipment either like equipment, or
 - b. to pay pro rata to the Contractor/assignee all payments then currently due according to the payment schedule, plus the pro rata principal portion of any remaining installments. The "pro rata principal portion of remaining installment payments" is that percentage of the principal portion of remaining installment payments as of the date of payment that the cost of the units of the equipment lost, stolen, destroyed, or rendered irreparably unusable or damaged bears to the total cost of the equipment determined by the amounts set forth in the field purchase order.
2. The Purchaser assumes all risks and liabilities for injury to or death of any person, or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Items, as more fully set forth in Paragraph 1 of Subsection G of this Section.

3. The Purchaser agrees to insure the Installment Items as provided under Paragraph 2 of Subsection G of this Section.

F. Warranties

1. The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items.
2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser's quiet enjoyment of the Installment Items so long as no event of default as defined in Subsection J of this Section shall have occurred and be continuing.

G. Liability

1. The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.

2. The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this Subsection, including but not limited to risks of public liability and property damage.

H. Assignment

1. The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment items without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Installment Purchase to an Initial Assignee, who in turn may further assign and/or grant a security interest in an Installment Purchase to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the

Purchaser, the Contractor may assign payments under any Installment Purchase to a third party.

2. The Contractor may assign, without DGS or Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Items. The Initial Assignee may take title to, and assume the right to receive all payments for, the Installment Items. The Contractor shall notify the Purchaser of any Installment Purchase PO assignment in its acknowledgment of the Installment Purchase PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.

3. Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Installment Purchase Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing an Installment Purchase PO, the Purchaser waives any claims it may have under the Installment Purchase against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Installment Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Installment Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached to these Installment Purchase Terms and Conditions, if any portion of the Installment Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make payments under the applicable Installment Purchase terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

4. After a Purchaser executes and the Initial Assignee receives an acceptance certificate:

a. The Purchaser shall, regardless of whether any portion of the Installment Items is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Installment Purchase and shall make any claim relating to the Installment Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

b. The rights of the Initial Assignee and any subsequent assignee to receive payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

5. Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS AN INSTALLMENT PURCHASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE INSTALLMENT ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY FINANCED ITEM "AS IS". IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

I. Financing and Prepayment

1. If the Contractor is not the supplier of the Installment Items, the Contractor will pay the charges for the Installment Items directly to the supplier. In the event the Contractor assigns the Installment Purchase to an Initial

Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make payments for the Installment Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Installment Item.

2. The Purchaser may at any time elect to prepay its remaining Installment Purchase payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.

3. If the Purchaser purchases Contract items related to an Installment Item prior to the expiration of the Installment Purchase terms, or if the Installment Purchase is terminated for any reason except non-appropriation as described in Subsection B of these Installment Purchase Terms and Conditions, and if the Installment Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Installment Item.

J. Remedies for Default

1. If the Purchaser does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment, if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

a. Terminate the applicable Installment Purchase.

b. Take possession of any or all Contract items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Contract items may be and remove and repossess the Contract items, from the premises without being liable to the Purchaser in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Contract items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Contract items and placing the Contract items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Contract items shall include only those items that were purchased under the Installment Purchase.

c. Recover from the Purchaser all payments then due, plus the net present value of the amount of the remaining payments. The present value of such remaining payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Installment Purchase. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.

2. In the event of Contractor default under the Default provision of the Contract, the Purchaser may pursue one or more of the following remedies:

a. If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.

b. The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the Contract payments will be recalculated to take into consideration and pay for the actual number of Contract items which were

delivered and accepted. If no Installment items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.

c. If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the contractor's default against its obligation to make payments.

K. Compliance with Internal Revenue Code

1. Tax Exempt Financing If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Installment Purchase term, permit the Installment Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

2. Governmental Status Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

L. Governing Law

All Purchases made under these Installment Purchase Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Installment Purchase Terms and Conditions.

M. Notices

Service of all notices under these Installment Purchase Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in the applicable Installment Purchase PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Installment Purchase PO, including any attached document.

Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

V.50 CONTRACT-043.1 Leasing Additional Terms and Conditions (Oct 2013)

To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any items covered by the Contract, these Leasing Terms And Conditions shall, in addition to the other terms and conditions of the Contract, govern the Lease, except to the extent the Contractor assigns a Lease to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. If a Lessee desires to lease contract items, the Lessee shall indicate its leasing election on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Property" in these Leasing Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected a leasing option.

A. Term of Lease

The Contractor may provide any Leased Property under the Contract for any term up to 60 months, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the Lease PO. The Lease term shall commence on the date the Lessee accepts the Leased Property by executing the Acceptance Certificate, and the term shall continue for the length

specified on the Lease PO. The form of the Acceptance Certificate can be found on the Forms page of the Department of General Services' webpage (www.dgs.state.pa.us).

If the Contractor delivers the Leased Property in more than one delivery, unless otherwise specified in the Specifications for this procurement, the Lessee will provide separate acceptance certificates for each delivery of the items, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted 30 days prior to the payment due date.

B. Payments

1. Full Term Intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term, unless the Lessee terminates the Lease, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section.
2. Non-Appropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
 - a. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 - b. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 - c. The Lessee gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property is not being replaced by similar items from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

C. Title

1. Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass to the Lessee upon payment of the final installment or other concluding payment option.
 - a. Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Leased Property.
 - b. The Leased Property shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
 - c. At the request of the Contractor or Initial Assignee, the Lessee will join the Contractor/assignee in executing one or more UCC-1 financing statements.
 - d. The Lessee will keep the Leased Property free and clear of all encumbrances except the Contractor's/assignee's security interest.

D. Use And Location Of, and Alteration to Leased Property

The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased

Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.

E. Risk of Loss

The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to that Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss. The Lessee is responsible for immediately reporting (within seventy-two hours or less) the theft or loss of the postage meter that is subject to this Rental Agreement.

F. Warranties

1. The Lessee shall have the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection J of this Section shall have occurred and be continuing.

G. Liability

1. The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Lessee.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1 of this Subsection, including but not limited to risks of public liability and property damage.

H. Assignment

1. The Lessee shall not assign any Lease PO or other interest in the Leased Property without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign payments under any Lease to a third party.
2. The Contractor may assign, without Lessee consent, any Lease PO to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease PO assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.

3. Notwithstanding any provisions to the contrary in the Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an Acceptance Certificate, if any portion of the Leased Property is unsatisfactory for any reason, the ordering Lessee shall, nevertheless, continue to make payments under the applicable Lease terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.

4. After a Lessee executes and the Initial Assignee receives an Acceptance Certificate:

a. The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and

b. The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

5. Warranty Disclaimer

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE LEASED PROPERTY "AS IS". IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

I. Financing and Prepayment

1. If the Contractor is not the supplier of the Leased Property, the Contractor will pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments under the Lease to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Lessee dissatisfaction with any Leased Property.

2. The Lessee may at any time terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.

3. If the Lessee purchases Contract items related to Leased Property prior to the expiration of the Lease term, or if the Lease is terminated for any reason except non-appropriation as described in Subsection B of this Subsection, and if the Leased Property has been delivered and the Lessee has executed and delivered to the Contractor an acceptance certificate, the Lessee shall prepay such Leased Property.

J. Remedies for Default

1. If the Lessee does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment, if the Lessee breaches any other provision under these Leasing Terms and Conditions and

such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Lessee files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:

a. Terminate the applicable Lease.

b. Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Leased Property may be and remove and repossess the Leased Property, from the premises without being liable to the Lessee in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the Lease.

c. Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.

2. In the event of Contractor default under the Default provision of the Contract, the Lessee may pursue one or more of the following remedies:

a. If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make payments for that Leased Property which has been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.

b. The Lessee may cancel, without liability for payment, its order for any Leased Property which has not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual amount of Leased Property which was delivered and accepted. If no Leased Property has been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.

c. If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against its obligation to make rental payments.

K. Purchase Option

If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional warranty" by tendering the purchase option amount the parties have established and after providing prior written notice to the Contractor of the election to purchase. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.

L. Extension

If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.

M. Return of Leased Property

At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Subsection J. of this Section, the Lessee shall promptly return the Leased Property at the Contractor's expense, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

1. Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Property or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Lessee that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.

2. Except in the event of a total loss of any or all Leased Property as described in Subsection E. of this Section, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.

3. The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Lessee shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.

N. Compliance with Internal Revenue Code

1. Tax Exemption Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.

2. Governmental Status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

O. Governing Law

All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.

P. Notices

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable Lease PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Lease PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

The Contractor is required to have in place during the term of the Contract and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

A. **Worker's Compensation Insurance** for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.

B. **Public Liability and Property Damage Insurance** to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Contract or the failure to perform under the Contract, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Contract and at each insurance renewal date during the term of the Contract, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days written notice has been given to the Commonwealth.

The Commonwealth shall be under no obligation to obtain such certificates from the Contractor(s). Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

V.52 CONTRACT-051.1 Notice (Dec 2006)

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

V.53 CONTRACT-052.1 Right to Know Law (Feb 2010)

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the

RTKL; and

2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

V.54 CONTRACT-053.1 Enhanced Minimum Wage Provisions (July 2022)

1. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

2. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:

a. exempt from the minimum wage under the Minimum Wage Act of 1968;

b. covered by a collective bargaining agreement;

c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

- d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

V.55 PCI SECURITY COMPLIANCE.

(a) General. By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the “Cardholder Data”). Contractor shall comply with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements for Cardholder Data that are prescribed by the payment brands (including, but not limited to, Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. The Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law or regulations.

(b) Compliance with Standards. The Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at: https://www.pcisecuritystandards.org/security_standards/index.php. The Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. The Contractor shall provide a letter of certification to attest to meeting this requirement within seven (7) days of the Contractor’s receipt of the annual PCI DSS compliance report.

V.56 DATA BREACH OR LOSS.

(a) The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the Breach of Personal Information Notification Act, as amended November 22, 2022, P.L. 2139, No. 151, 73 P.S. §§ 2301—2330. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the Breach of Personal Information Notification Act, the Contractor shall comply with the then current version of the following IT Policies (ITPs): ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data; ITP-SEC024, IT Security Incident Reporting Policy; ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII); and ITP-SEC031, Encryption Standards.

(b) For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:

(i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information (“Incident”) to the Commonwealth within seventy-two (72) hour of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.

(ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth’s request, Contractor shall, at its sole expense, provide

credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

(iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.

(c) As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

V.57 LIMITATION OF LIABILITY.

(a) General. The Contractor's liability to the Commonwealth under this Contract shall be limited to the greater of **\$250,000** or the value of this Contract (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:

- (i) for bodily injury;
- (ii) for death;
- (iii) for gross negligence or intentional or willful misconduct;
- (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
- (v) under **Section V.59, Patent, Copyright, Trademark and Trade Secret Protection**;
- (vi) under **Section V.56, Data Breach or Loss**; or
- (vii) under **Section V.58, Virus, Malicious, Mischievous or Destructive Programming**.

(b) The Contractor will not be liable for consequential or incidental damages, except for damages as set forth in **paragraphs (a)(i)—(vii)** above, or as otherwise specified in the Contract.

V.58 VIRUS, MALICIOUS, MISCHIEVOUS OR DESTRUCTIVE PROGRAMMING.

- (a) The Contractor shall be liable for any damages incurred by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- (b) The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- (c) In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous, or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
- (d) The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- (e) The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any

computing devices being used by representatives of the Contractor to provide Services to the Commonwealth for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.

- (f) The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- (g) The Commonwealth will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

V.59 PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET PROTECTION.

- (a) The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, trademarks or trade dress, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the [Commonwealth Attorneys Act](#), Act of October 15, 1980, P.L. 950, No. 164, as amended, 71 P.S. § 732-101—732-506, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG, however, in its sole discretion and under the terms it deems appropriate, may delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement that prevents the Commonwealth from continuing to use the Developed Works as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor, at its expense, will provide whatever cooperation OAG requests in the defense of the suit.
- (b) The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade dress, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.
- (c) If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- (d) If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, trademark or trade dress, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense:
 - (i) substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs; or

- (ii) obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- (e) If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- (f) If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
 - (i) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (ii) any license fee less an amount for the period of usage of any software; and
 - (iii) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made.
- (g) Notwithstanding the above, the Contractor shall have no obligation for:
 - (i) modification of any product, service, or deliverable provided by the Commonwealth;
 - (ii) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (iii) use of the product, service, or deliverable in other than its specified operating environment;
 - (iv) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (v) infringement of a non-Contractor product alone;
 - (vi) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
 - (vii) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- (h) The obligation to indemnify the Commonwealth, under the terms of this section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

Requirements for Non-Commonwealth Hosted Applications/Services

The purpose of this Attachment is to define requirements for business or technology solutions and services procured by the Commonwealth that are hosted within the Licensor's or its subcontractor's managed infrastructure.

A. Hosting Requirements

1. The Licensor or its subcontractor shall supply all hosting equipment (hardware and software) required for the cloud services and performance of the software and services set forth in the Quote and Statement of Work.
2. The Licensor shall provide secure access to applicable levels of users via the internet.
3. The Licensor shall use commercially reasonable resources and efforts to maintain adequate internet connection bandwidth and server capacity.
4. The Licensor or its subcontractors shall maintain all components of the hosted solution with commercially reasonable support and replace as necessary to maintain compliance.
5. The Licensor shall monitor, prevent and deter unauthorized system access. The Licensor shall use all commercially reasonable methods to confirm suspected breaches. In the event of any impermissible disclosure unauthorized loss or destruction of Confidential Information, the receiving Party must immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure of such Confidential Information. In addition, pertaining to the unauthorized access, use, release, or disclosure of data, the Licensor shall comply with state and federal data breach notification statutes and regulations, and shall report security incidents to the Commonwealth within **one (1) hour** of when the Licensor has reasonable confirmation of such unauthorized access, use, release, or disclosure of data.
6. The Licensor or the Licensor's subcontractor shall allow the Commonwealth or its delegate, at times chosen by the Commonwealth, and with at least **three (3) business days'** notice, to review the hosted system's data center locations and security architecture.
7. The Licensor's employees or subcontractors, who are directly responsible for day-to-day monitoring and maintenance of the hosted system, shall have industry standard certifications applicable to the environment and system architecture used.

8. The Licensor or the Licensor's subcontractor shall locate servers in a climate-controlled environment. The Licensor or the Licensor's contractor shall house all servers and equipment in an operational environment that meets industry standards including climate control, fire and security hazard detection, electrical needs, and physical security.
9. The Licensor shall examine applicable system and error logs daily to minimize and predict system problems and initiate appropriate action.
10. The Licensor shall completely test and apply patches for all third-party software products in the server environment before release.
11. The Licensor shall provide all Commonwealth data to the Commonwealth, upon request, in a form acceptable to the Commonwealth, at no cost to the Commonwealth.

B. System and Organization Controls (SOC) Reporting Requirements

1. Subject to this section and unless otherwise agreed to in writing by the Commonwealth, the Licensor shall, and shall require its subcontractors to, engage, on an annual basis, a CPA certified third-party auditing firm to conduct the following, as applicable:
 - (i) a SOC 1 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that process Commonwealth financial transactions; and
 - (ii) a SOC 2 Type II report with respect to controls used by the Licensor relevant to internal and external procedures and systems that access, process, host or contain Commonwealth Data designated as Class "C" Classified Records or Closed Records, as defined in ITP-SEC019, or in compliance with mandates by federal or state audit requirements and/or policy.

The Licensor shall receive and review their subcontractor's relevant SOC reports, and the Licensor shall provide the Commonwealth with a Letter of Attestation that includes an analysis of their subcontractor's SOC report.

2. Unless otherwise agreed to in writing by the Commonwealth, the Licensor's SOC Report(s) shall be provided upon contract execution and annually thereafter. While it is preferable that SOC Reports coincide with Pennsylvania's fiscal year (July 1 through June 30), SOC Reports, at the very least, must cover at least **6 consecutive months** of Pennsylvania's fiscal year.

3. SOC 2 Type II reports shall address the following:
 - (i) Security of Information and Systems;
 - (ii) Availability of Information and Systems;
 - (iii) Processing Integrity;
 - (iv) Confidentiality;
 - (v) Privacy; and
 - (vi) if applicable, compliance with the laws, regulations standards or policies designed to protect the information identified in ITP-SEC019 or other information identified as protected or Confidential by this Contract or under law.
4. At the request of the Commonwealth, the Licensors shall, and shall require its subcontractors, as applicable, complete a SOC for Cybersecurity audit in the event:
 - (i) repeated non-conformities are identified in any SOC report required by subsection 1; or
 - (ii) if the Licensors' business model changes (such as a merger, acquisition, or change sub-contractors, etc.).

The SOC for Cybersecurity report shall detail the controls used by the Licensors or its subcontractors setting forth the description and effectiveness of the Licensors' or subcontractors' cybersecurity risk management program and the policies, processes and controls enacted to achieve each cybersecurity objective.

The Licensors shall provide to the Commonwealth a report of the SOC for Cybersecurity audit findings within **60 days** of its completion.

5. The Commonwealth may specify other or additional standards, certifications or audits it requires under any Purchase Orders or within an ITP.
6. The Licensors shall adhere to Statement on Standards for Attestation Engagements (SSAE) 18 audit standards. The Licensors acknowledges that the SSAE guidance may be updated during the Term of this Contract, and the Licensors shall comply with such updates which shall be reflected in the next annual report.
7. In the event an audit reveals any non-conformity to SSAE standards, the Licensors shall provide the Commonwealth, within **45 days** of the issuance of the SOC report, a documented corrective action plan that addresses each non-conformity that is identified within the SOC report, including any subcontractors' SOC report. The corrective action plan shall provide, in detail:

- (i) clear responsibilities of the personnel designated to resolve the non-conformity;
 - (ii) the remedial action to be taken by the Licensor or its subcontractor(s);
 - (iii) the dates when each remedial action is to be implemented; and
 - (iv) a summary of potential risks or impacts to the Commonwealth that are associated with the non-conformity(ies).
8. The Commonwealth may in its sole discretion agree, in writing, to accept alternative security report in lieu of a SOC report.

C. Security Requirements

- 1. The Licensor shall conduct a third-party independent security/vulnerability assessment at its own expense on an annual basis.
- 2. The Licensor shall comply with the Commonwealth's directions/resolutions to remediate the results of the security/vulnerability assessment to align with the standards of the Commonwealth.
- 3. The Licensor shall use industry best practices to protect access to the system with a firewall and firewall rules to prevent access by non-authorized users and block all improper and unauthorized access attempts.
- 4. The Licensor shall use industry best practices to provide applicable system intrusion detection and prevention in order to detect intrusions in a timely manner.
- 5. The Licensor shall use industry best practices to provide applicable malware and virus protection or compensating controls on all servers and network components.
- 6. The Licensor shall limit access to Commonwealth-specific systems, data and services and provide access only to those staff, located within CONUS (any of the Continental United States and Hawaii) that must have access to provide services proposed.
- 7. The Licensor shall provide the services, using security technologies and techniques in accordance with industry best practices and the Commonwealth's ITPs set forth in Attachment 1, including those relating to the prevention and detection of intrusions, and any other inappropriate use or access of systems and networks.

D. Data Protection

- 1. The Licensor shall only host, store or backup Commonwealth Data in physical locations within CONUS.

2. The Licensor shall use industry best practices to update and patch all applicable systems and third-party software security configurations to reduce security risk.
3. The Licensor shall protect their operational systems with applicable anti-virus, host intrusion protection, incident response monitoring and reporting, network firewalls, application firewalls, and employ system and application patch management to protect its network and customer data from unauthorized disclosure.
4. The Licensor shall be solely responsible for applicable data storage required.
5. The Licensor shall encrypt all Commonwealth data in transit and at rest. The Licensor shall comply with ITP-SEC031, and ITP-SEC019, encryption policies and minimum standards or stronger.
6. The Licensor shall take all commercially viable and applicable measures to protect the data availability including, but not limited to, real-time replication, traditional backup, and/or georedundant storage of Commonwealth data in accordance with industry best practices and encryption techniques.
7. The Licensor shall have appropriate controls in place to protect critical or sensitive data and shall employ stringent policies, procedures, to protect that data particularly in instances where such critical or sensitive data may be stored on a Licensor-controlled or Licensor-owned electronic device.
8. The Licensor shall utilize a secured backup solution to prevent loss of data. Stored backups must be kept in an all-hazards protective storage environment at the primary location and any additional locations where the data is being maintained. All back up data and media shall be encrypted.

E. Adherence to Policy

1. The Licensor support and problem resolution solution shall provide a means to classify problems as to criticality and impact and with appropriate resolution procedures and escalation process for classification of each problem.
2. The Licensor shall abide by the applicable Commonwealth's Information Technology Policies (ITPs), a list of the most relevant being attached hereto as Attachment 1.
3. The Licensor shall comply with all pertinent federal and state privacy regulations.

F. Closeout

When the purchase order's or other procurement document's term expires or terminates, and a new purchase order or other procurement document has not been issued by a Commonwealth Agency within **60 days** of expiration or termination, or at any other time at the written request of the Commonwealth, the Licenser must promptly return to the Commonwealth all Commonwealth's data (and all copies of this information) that is in the Licenser's possession or control. The Commonwealth's data shall be returned in a format agreed to by the Commonwealth.

Upon confirmation that Commonwealth data is in possession or control of the Commonwealth, the Licenser shall ensure all residual user account(s) are promptly deleted or reset in the solution. The Licenser shall notify the Commonwealth within **10 business days** that all user account(s) have been deleted or reset.

ATTACHMENT 1

Information Technology Policies (ITPs) for Outsourced/Licensor(s)-hosted Solutions

ITP Number - Name	Policy Link
ITP_ACC001 - Accessibility Policy	https://www.oa.pa.gov/Policies/Documents/itp_acc001.pdf
ITP_APP030 - Active Directory Architecture	https://www.oa.pa.gov/Policies/Documents/itp_app030.pdf
ITP_BUS007 - Enterprise Service Catalog	https://www.oa.pa.gov/Policies/Documents/itp_bus007.pdf
ITP_BUS010 - Business Process Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus010.pdf
ITP_BUS012 - Artificial Intelligence General Policy	https://www.oa.pa.gov/Policies/Documents/itp_bus012.pdf
ITP_INF000 - Enterprise Data and Information Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf000.pdf
ITP_INF001 - Database Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_inf001.pdf
ITP_INF006 - Commonwealth County Code Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf006.pdf
ITP_INF009 - e-Discovery Technology Standard	https://www.oa.pa.gov/Policies/Documents/itp_inf009.pdf
ITP_INF010 - Business Intelligence Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf010.pdf
ITP_INF011 - Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf011.pdf
ITP_INF012 - Dashboard Policy	https://www.oa.pa.gov/Policies/Documents/itp_inf012.pdf
ITP_INFRM001 - The Life Cycle of Records: General Policy Statement	https://www.oa.pa.gov/Policies/Documents/itp_infrm001.pdf
ITP_INFRM004 - Management of Web Records	https://www.oa.pa.gov/Policies/Documents/itp_infrm004.pdf
ITP_INFRM005 - System Design Review of Electronic Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm005.pdf
ITP_INFRM006 - Electronic Document Management Systems	https://www.oa.pa.gov/Policies/Documents/itp_infrm006.pdf
ITP_INT_B_1 - Electronic Commerce Formats and Standards	https://www.oa.pa.gov/Policies/Documents/itp_int_b_1.pdf
ITP_INT_B_2 - Electronic Commerce Interface Guidelines	https://www.oa.pa.gov/Policies/Documents/itp_int_b_2.pdf
ITP_INT006 - Business Engine Rules	https://www.oa.pa.gov/Policies/Documents/itp_int006.pdf
ITP_NET004 - Internet Protocol Address Standards	https://www.oa.pa.gov/Policies/Documents/itp_net004.pdf
ITP_NET005 - Commonwealth External and Internal Domain Name Services (DNS)	https://www.oa.pa.gov/Policies/Documents/itp_net005.pdf
ITP_PRV001 - Commonwealth of Pennsylvania Electronic Information Privacy Policy	https://www.oa.pa.gov/Policies/Documents/itp_prv001.pdf
ITP_SEC000 - Information Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec000.pdf
ITP_SEC001 - Enterprise Host Security Software Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec001.pdf
ITP_SEC002 - Internet Accessible Proxy Servers and Services	https://www.oa.pa.gov/Policies/Documents/itp_sec002.pdf
ITP_SEC003 - Enterprise Security Auditing and Monitoring	https://www.oa.pa.gov/Policies/Documents/itp_sec003.pdf
ITP_SEC004 - Enterprise Web Application Firewall	https://www.oa.pa.gov/Policies/Documents/itp_sec004.pdf
ITP_SEC006 - Commonwealth of Pennsylvania Electronic Signature Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec006.pdf
ITP_SEC007 - Minimum Standards for IDs, Passwords and Multi-Factor Authentication	https://www.oa.pa.gov/Policies/Documents/itp_sec007.pdf
ITP_SEC008 - Enterprise E-mail Encryption	https://www.oa.pa.gov/Policies/Documents/itp_sec008.pdf
ITP_SEC009 - Minimum Contractor Background Checks Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec009.pdf
ITP_SEC010 - Virtual Private Network Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec010.pdf

ITP Number - Name	Policy Link
ITP_SEC011 - Enterprise Policy and Software Standards for Agency Firewalls	https://www.oa.pa.gov/Policies/Documents/itp_sec011.pdf
ITP_SEC012 - System Logon Banner and Screensaver Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec012.pdf
ITP_SEC015 - Data Cleansing	https://www.oa.pa.gov/Policies/Documents/itp_sec015.pdf
ITP_SEC016 - Information Security Officer Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec016.pdf
ITP_SEC017 - Copa Policy for Credit Card Use for e-Government	https://www.oa.pa.gov/Policies/Documents/itp_sec017.pdf
ITP_SEC019 - Policy and Procedures for Protecting Commonwealth Electronic Data	https://www.oa.pa.gov/Policies/Documents/itp_sec019.pdf
ITP_SEC021 - Security Information and Event Management Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec021.pdf
ITP_SEC023 - Information Technology Security Assessment and Testing Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec023.pdf
ITP_SEC024 - IT Security Incident Reporting Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec024.pdf
ITP_SEC025 - Proper Use and Disclosure of Personally Identifiable Information (PII)	https://www.oa.pa.gov/Policies/Documents/itp_sec025.pdf
ITP_SEC029 - Physical Security Policy for IT Resources	https://www.oa.pa.gov/Policies/Documents/itp_sec029.pdf
ITP_SEC031 - Encryption Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec031.pdf
ITP_SEC032 - Enterprise Data Loss Prevention (DLP) Compliance Standards	https://www.oa.pa.gov/Policies/Documents/itp_sec032.pdf
ITP_SEC034- Enterprise Firewall Rule Set	https://www.oa.pa.gov/Policies/Documents/itp_sec034.pdf
ITP_SEC035 - Mobile Device Security Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec035.pdf
ITP_SEC038 - Commonwealth Data Center Privileged User IAM Policy	https://www.oa.pa.gov/Policies/Documents/itp_sec038.pdf
ITP-SEC039 - Keystone Login and Identity Proofing	https://www.oa.pa.gov/Policies/Documents/itp-sec039.pdf
ITP_SEC040 - Commonwealth Cloud Computing Services Requirements	https://www.oa.pa.gov/Policies/Documents/itp_sec040.pdf
ITP_SFT000 - Software Development Life Cycle (SDLC) Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft000.pdf
ITP_SFT001 - Software Licensing	https://www.oa.pa.gov/Policies/Documents/itp_sft001.pdf
ITP_SFT002 - Commonwealth of PA Website Standards	https://www.oa.pa.gov/Policies/Documents/itp_sft002.pdf
ITP_SFT003 - Geospatial Enterprise Service Architecture	https://www.oa.pa.gov/Policies/Documents/itp_sft003.pdf
ITP_SFT004 - Geospatial Information Systems (GIS)	https://www.oa.pa.gov/Policies/Documents/itp_sft004.pdf
ITP_SFT005 - Managed File Transfer (MFT)	https://www.oa.pa.gov/Policies/Documents/itp_sft005.pdf
ITP_SFT007 - Office Productivity Policy	https://www.oa.pa.gov/Policies/Documents/itp_sft007.pdf
ITP_SFT008 - Enterprise Resource Planning (ERP) Management	https://www.oa.pa.gov/Policies/Documents/itp_sft008.pdf
ITP_SFT009 - Application Development	https://www.oa.pa.gov/Policies/Documents/itp_sft009.pdf
ITP_SYM003 - Off-Site Storage for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym003.pdf
ITP_SYM004 - Policy for Establishing Alternate Processing Sites for Commonwealth Agencies	https://www.oa.pa.gov/Policies/Documents/itp_sym004.pdf
ITP_SYM006 - Commonwealth IT Resources Patching Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym006.pdf
ITP_SYM008 - Server Virtualization Policy	https://www.oa.pa.gov/Policies/Documents/itp_sym008.pdf
ITP_SYM010 - Enterprise Services Maintenance Scheduling	https://www.oa.pa.gov/Policies/Documents/itp_sym010.pdf



ELECTION TO PARTICIPATE FORM

COSTARS PROGRAM

If awarded a Contract, our firm agrees to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to registered COSTARS Members who elect to participate in the contract.

Our firm also agrees to pay the applicable Administrative Fee at the beginning of each contract year and/or upon each contract renewal date:

\$166 for a Department of General Services-verified Small Diverse Business or
Small, Veteran Business Enterprise

\$500 for a Department of General Services Self-Certified Small Business

\$1,500 for all other businesses

***If you are a Department of General Services Self-Certified Small Business or
Department of General Services-verified Small Diverse Business,
you must submit a copy of your active Small Business Contracting Program
certificate with your bid response.***

Corporate or Legal Entity Name:	
Signature:	
Date:	
Contract Name:	
Parent Contract Number:	

IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

Vendor Name/Financial Institution (Printed) Quadient, Inc.	
By (Authorized Signature) <i>John Tartaro</i>	
Printed Name and Title of Person Signing John Tartaro, Deputy CFO	Date Executed Jan 16, 2024

OPTION #2 – EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

Vendor Name/Financial Institution (Printed)	
By (Authorized Signature)	
Printed Name and Title of Person Signing	Date Executed



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee's compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>John Tartaro</i>	Jan 17, 2024
<i>Signature</i>	<i>Date</i>
John Tartaro	
<i>Name (Printed)</i>	
Deputy CFO	
<i>Title of Certifying Official (Printed)</i>	
Quadient, Inc.	
<i>Contractor/Grantee Name (Printed)</i>	



pennsylvania

DEPARTMENT OF GENERAL SERVICES
BUREAU OF PROCUREMENT

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<https://www.gsa.gov/Forms/TrackForm/33144>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

SIGNATURE: John Tartaro

TITLE: Deputy CFO DATE: Jan 16, 2024

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00) This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

- D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . ./and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE
Inserters	Quadient	Holland & England
Address Printing	Quadient	Germany
Mailing Machines	Quadient	Final Assembly in MS

IV. BIDDER'S RESIDENCY

- A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: Quadient, Inc.

478 Wheelers Farms Rd.

Milford, CT 06461

B. In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:

1. Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____

2. a. If the bidder is a corporation:

(1) The corporation ☐ is or ☒ is not incorporated under the laws of the Commonwealth of Pennsylvania.

(a) If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____

(b) If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: 4/7/1975

(2) The corporation ☐ is or ☒ is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____

b. If the bidder is a partnership:

(1) The partnership ☐ is or ☐ is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____

(2) The partnership ☐ is or ☐ is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____

c. If the bidder is an individual:

He or she ☐ is or ☐ is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____