

Participating Addendum
24PSX0069

This Participating Addendum is made by and between the State of Connecticut acting by its Department of Administrative Services (“DAS” or “Participating Entity”), in accordance with sections 4a-2, 4a-51 and 4a-53 of the Connecticut General Statutes, and Fastenal Company (“Contractor”).

The Contractor and DAS agree as follows:

1. DAS and the Contractor shall be bound by the terms of a certain National Association of State Procurement Officials (“NASPO”) master agreement number MA 758 2500000414 entered into between the Contractor and the State of Kentucky effective as of September 1, 2024 (the “Master Agreement”) for the purchase of facilities maintenance repair and operation services and industrial supplies other than green cleaners and paint products listed in Exhibit 1 of the Master Agreement (the “Deliverables”).
2. The Master Agreement, attached to this Participating Addendum as Exhibit 1 and as modified by this Participating Addendum, binds DAS and Contractor, but only for purposes of enabling DAS to contract for the Deliverables from Contractor and not to contract for any other purpose, including green cleaners in category 1 (Janitorial Supplies, Equipment, and Sanitation Cleaning Chemicals) and paint products in category 12 (Paint and Related Supplies) (“Excluded Purchases”).
3. The Contractor and DAS are not bound to any terms of the Master Agreement that exclusively relate to the Excluded Purchases or to any modifications to the Master Agreement dated after the date of this Participating Addendum.
4. For purposes of this Participating Addendum, references in the Master Agreement to Kentucky shall be interpreted to mean DAS.
5. Order of Precedence:
 - A. This Contract and the Master Agreement shall be read to be consistent and complementary. Any ambiguity, conflict or inconsistency between them shall be resolved by giving priority to this Contract.
 - B. To the extent that any provisions in the Master Agreement and this Contract address the same or substantially the same subject matter, the provisions in this Contract shall prevail and replace, in their entirety, the provisions in the Master Agreement addressing the same or substantially the same subject matter. To the extent any provisions in the Master Agreement are titled the same or similarly titled as a provision in this Contract, the provisions in this Contract replace, in their entirety, the same or similarly titled provisions in the Master Agreement.

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- C. All terms listed or referenced in any solicitation documents or in the Contractor's response to any solicitation documents are excluded from this Contract.
- D. All other terms in the Master Agreement not specifically deleted or modified remain in full force and effect as to the Contractor, DAS and the Client Agency.
6. The Contractor shall comply with the Connecticut Standard Terms, which are attached as Exhibit 2. As used in this Participating Addendum, the capitalized word "Contract" is deemed to refer to this Participating Addendum and its exhibits.
7. The Contractor shall comply with the Price Schedule, which is attached as Exhibit 3.
8. To the extent that DAS or the Client Agency fails to meet its obligations under this Participating Addendum, the Contractor's exclusive remedies will be to seek redress in accordance with applicable Connecticut law, including the claims commissioner process set forth in Chapter 53 of the Connecticut General Statutes concerning claims against the State.
9. Nothing in the Master Agreement as modified by this Participating Addendum shall be construed as a modification, compromise or waiver by DAS or the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State of Connecticut or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Master Agreement as modified by this Participating Addendum . To the extent that this section conflicts with any other section in the Master Agreement, this section shall govern.
10. Any Purchasing Entity or Client Agency may issue purchase orders against this Participating Addendum. "Purchasing Entity" or "Client Agency" means any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in the State of Connecticut and any entity identified in Conn. Gen. Stat. Sec. 4a-54, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms and conditions of, this Participating Addendum.

11. Primary Contacts

Participating Entity:

Name: State of Connecticut, Department of Administrative Services, Procurement Division

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Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103

Contact: Greg Mooney

Email: Gregory.mooney@ct.gov

Contractor:

Name: Fastenal Company

Address: 1030S 9th Street Louisville KY, 40203

Contact: Zach Wise

Telephone: 507-313-7206

Email: govsales@fastenal.com

12. Orders

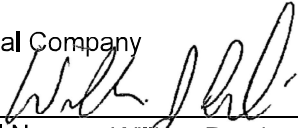
Any order placed by a Client Agency shall be deemed to be a sale under and governed by the prices and terms of Exhibit 1, Master Agreement and this Participating Addendum.

Client Agencies shall include the references to "Master Agreement No. 758 2500000414" and "DAS Contract No.24PSX0069" in all Purchase Orders.

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The parties are executing this Participating Addendum on the date below their respective signatures.

Fastenal Company

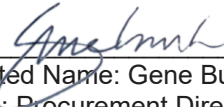
By: 

Printed Name: William Drazkowski

Title: Executive Vice President

Date: 12/17/2024

STATE OF CONNECTICUT
DEPARTMENT OF ADMINISTRATIVE SERVICES

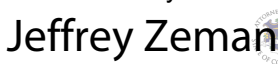
By: 

Printed Name: Gene Burk

Title: Procurement Director

Date: 12.17.2024

APPROVED AS TO FORM
STATE OF CONNECTICUT
Office of the Attorney General

BY:   Digitally signed by Jeffrey Zeman
Date: 2024.12.19 09:29:52 -05'00'

Name: Jeffrey Zeman
Title: Assistant Attorney General
Date:



Commonwealth of Kentucky

MASTER AGREEMENT

CONTRACT INFORMATION			
MASTER AGREEMENT NUMBER: MA 758 2500000414			
Effective Date:	09/01/2024	Record Date:	
Expiration Date:	08/31/2026	Procurement Folder:	1306457
Document Description:	Facilities MRO and Industrial Supplies NASPO (Fastenal)	Procurement Type:	Standard Goods and Services
Cited Authority:	Competitive Negotiation-Goods and Services	Version Number:	1

CONTACT INFORMATION

ISSUER:
Daniel Salvato
502-564-5862
daniel.salvato@ky.gov

VENDOR INFORMATION	
Name /Address:	Contact:
KY0028496: FASTENAL COMPANY	Ken Lyons
1030S 9TH STREET	3172238007
LOUISVILLE KY 40203	klyons@fastenal.com

COMMODITY / SERVICE INFORMATION							
Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
1	1.00000	EA	\$0.010000	\$0.00			\$0.01
Facilities MRO and Industrial Supplies							
<u>Extended Description:</u>							

	Document Type	Document Description	Page 2
2500000414	Draft	Facilities MRO and Industrial Supplies NASPO (Fastenal)	Total Pages: 2

See “Attachment A” for Terms and Conditions. The terms and conditions set out in “Attachment A” are incorporated into and are a part of the Contract.

Master Agreement Number MA 758 2500000414
for
FACILITIES MRO AND INDUSTRIAL SUPPLIES
between
the State of Kentucky
and
Fastenal Company

This Master Agreement is entered into by the State of Kentucky ("Lead State") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number RFP 758 2400000228 (the "RFP") for the purpose of providing Facilities MRO and Industrial Supplies through the NASPO ValuePoint cooperative purchasing program:

Fastenal Company ("Contractor")
2001 Theurer Blvd.
Winona, Mn. 55987

MASTER AGREEMENT CONTACTS.

Contractor's contact for this Master Agreement is:

Zach Wise
Government Sales Manager
govsales@fastenal.com
507-313-7206

Lead State's contact for this Master Agreement is:

Daniel Salvato, CPPB, NIGP-CPP, KCPM
Office of Procurement Services
200 Mero Street, 5th Floor
Frankfort, KY 40622
(502) 564-5862
daniel.salvato@ky.gov

TERM. This Master Agreement is effective as of the date of September 1, 2024, and will terminate on August 31, 2026 unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to four years following the initial term may be exercised upon mutual agreement by the Parties.

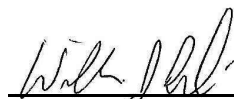
ATTACHMENTS. This Master Agreement includes the following attachments:

Attachment A: Master Agreement Terms and Conditions
Exhibit 1: Description of Goods and/or Services and Discount Percentages
Exhibit 2: Environmentally Preferred Products
Exhibit 3: NASPO ValuePoint Sales Data Report Form

SIGNATURE. The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

CONTRACTOR:

 8/28/2024
Signature Date

William Dratzkowski, Executive Vice President
Printed Name and Title

LEAD STATE:

DocuSigned by:  8/30/2024
Signature Date

Kathy Robinson, Executive Director
Printed Name and Title

Attachment A**MASTER AGREEMENT TERMS AND CONDITIONS****NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS****I. Definitions**

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for two years. The term of this Master Agreement may be amended beyond the initial term for four additional years (two renewals for two years each) at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in

the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

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

- 3.1.1** A Participating Entity's Participating Addendum ("PA");
- 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
- 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
- 3.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

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

IV. Participants and Scope

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

4.2 Applicability of Master Agreement. NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a

Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

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

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

4.5 Participating Entities.

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

4.5.1.1 Political subdivisions, public agencies, and service districts;

4.5.1.2 Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;

4.5.1.3 Federally recognized tribes;

4.5.1.4 Quasi-governmental entities; and

4.5.1.5 Eligible non-profit organizations.

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

each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

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

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

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

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

V. NASPO ValuePoint Provisions

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

5.2 Administrative Fees

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

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

5.3.4 Sales Data Crosswalks. Intentionally omitted.

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

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

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

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will

include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 NASPO ValuePoint eMarketPlace

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

Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.

- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms and pricing of this Master Agreement.
- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (e.g., entity-

specific pricing, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.

5.5.11 Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

5.5.11.1 Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.

5.5.11.2 Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.

5.5.11.3 NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.

5.5.11.3.1 Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.

5.5.11.3.2 Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.

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

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

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

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

5.7 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest

Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

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

VI. Pricing, Payment & Leasing

6.1 Pricing. The discount percentages contained in this Master Agreement or offered under this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discount percentages must be guaranteed for the term of the Master Agreement.

6.1.2 Pricing shall be held static, or reduced, from order through delivery. No pricing increases between order and delivery shall be accepted.

6.1.3 Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State and Contractor.

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, except as noted below, will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

8.1.1 Additional shipping charges for oversized or overweight items that require special shipping are allowed but must be identified as part of the ordering process.

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

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

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

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

IX. Inspection and Acceptance

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

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

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

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

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

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

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

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

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

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity

may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to 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 identity of any entity seeking access to the Confidential Information described in this subsection.

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

14.3 Assignment/Subcontracts

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

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

14.3.3 The contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire contract whether or not subcontractors are used. The Lead State shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor. All references to the contractor shall be construed to encompass both the contractor and any subcontractors of the contractor.

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

education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

14.5 Independent Contractor. Contractor is an independent contractor.

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

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

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

14.8 Defaults and Remedies

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

14.8.1.1 Nonperformance of contractual requirements;

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

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

14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar

officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

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

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

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

14.8.3.1 Any remedy provided by law;

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

14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;

14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;

14.8.3.5 Suspension of Contractor's performance; and

14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default

as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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

14.10 Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

14.11 No Waiver of Sovereign Immunity

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

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

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

14.12 Governing Law and Venue

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

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

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

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

14.14 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not

limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

14.15 Discrimination. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

- 14.15.1** The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. 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 compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 14.15.2** 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, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
- 14.15.3** The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for

employment. 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.

- 14.15.4** The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 14.15.5** The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 14.15.6** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- 14.15.7** The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 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 No. 11246 of September 24, 1965, as amended, 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 agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

14.16 Accessibility. Vendor hereby warrants that the products or services to be provided under this contract comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

XV. Protest

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective offerors in connection with the solicitations or selection for award of a contract.

Any actual or prospective offeror or contractor, who is aggrieved in connection with solicitation or selection for award of a contract, may file a protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed and mailed to:

**Holly M. Johnson, Secretary
COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
200 MERO STREET, 5TH FLOOR
FRANKFORT, KY 40622**

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

Exhibit 1

Description of Goods and/or Services, Prices, and Discount Percentages

SERVICES AND GOODS AVAILABLE UNDER THIS MASTER AGREEMENT

Contractor has been awarded all products and services in the awarded categories below.

Category	Minimum Discount Percentage
1. Janitorial Supplies, Equipment, and Sanitation Cleaning Chemicals	45%
2. Fasteners	60%
3. Material Handling	35%
4. Plumbing Equipment	45%
5. Power Sources	40%
6. Landscaping and Outdoor Supplies and Equipment	35%
7. Lamps, Lighting, Ballasts, and Equipment	40%
8. Heating, Ventilation, Air Conditioning (HVAC)	35%
9. Hand Tools	40%
10. Power Tools	30%
11. Electrical Supplies and Equipment	45%
12. Paint and Related Supplies	40%
13. Security	40%
14. Safety	40%
15. Other	28%

Products and Services are available to Authorized Purchasers.

Addition or Deletion of Items or Services. The Lead State reserves the right to add new and similar items, by issuing a contract modification, to this contract with the consent of the Contractor. Until such time as the Contractor receives a modification, the Contractor shall not accept delivery orders from any Participating Entity referencing such items or services.

Return Policy:

Product can be returned for up to one (1) year from date of invoice if product is in its original packaging, unused, unexpired, undamaged, and in resalable condition, except as noted below.

Proof of Purchase is required in all instances. Fastenal's motto is Growth Through Customer Service, and in practice the final decision on returns that do not meet our

stated policy is up to the local servicing branch.

Fastenal allows returns for any reason up to 30 days from date of invoice unless otherwise noted. Any returns for shipping errors, damage or loss upon delivery must be reported within 10 days of the delivery date. All returns should be made to a Fastenal branch or as otherwise designated by Fastenal, must be in resalable condition and be accompanied with proof of purchase.

Products sold on a "Final Sale" basis as defined below cannot be returned. "Sourced Product" (defined below) is subject to the manufacturer's return policy and may not be returnable. Some product returns may be denied or made subject to restocking fees and other charges by Fastenal.

FINAL SALE ITEMS. Items sold on a "Final Sale" basis include: (i) custom or sourced items; (ii) special-order items; (iii) emergency response items; (iv) items marked in quotations or invoices as "Non-Cancellable" or "Non-Returnable"; and (v) any other items that Fastenal may designate as a "Final Sale" from time to time.

STATE OF EMERGENCY: During a State of Emergency (such as a hurricane), some items may be noncancelable, non-refundable, and non-returnable. Purchasing Entities will be notified of these non-returnable items at the time of purchase.

SOURCED ITEMS. Sourced items as defined (Sourced product are products which are not currently listed in Fastenal's contract catalog or on-line ordering system but are able to be supplied by Fastenal. Fastenal's sourcing model is a service that we offer to customers to source products. The local Fastenal branch manages the sourcing, procurement, delivery, and, if required, the inventory management of the sourced product as part of a Fastenal vendor managed inventory solution. Fastenal's sourced products are a direct line extension of the product offering consisting of thousands of vendors with whom we have developed a publicly recognized business relationship around promoting and developing the brands representative of the vendor. Price quotes and freight for these sourced products are based on current market conditions and are negotiated locally on a per-order basis and approved by the Participating Entity) which are ordered and delivered to the Purchasing Entity may be non-returnable and non-refundable. Sourced Items that have been ordered by the Purchasing Entity and are non-cancelable by the manufacturer, Purchasing Entity must accept and pay for the delivered quantities, excluding non-conforming items.

Exhibit 2

Environmentally Preferred Products

1.1 Description of Goods and/or Services, Prices and Discount Percentages or Environmentally Preferred Products (if applicable).

1.2 Terms and Conditions for Environmentally Preferred

Products Accurate Labeling of Environmentally

Preferable Products (EPPs)

Offeror must certify in writing that all claims made about the environmental attributes of the products they are offering are consistent with the Federal Trade Commission's (FTC's) *Guidelines for the Use of Environmental Marketing Terms*. In addition, Offerors may be required to provide documentation, at the request of the Purchasing Entity that the products they are offering meet the Environmental Specifications for this contract.

Over the life of the Master Agreement if awarded, the Offeror must label the environmental attributes of all environmentally preferable products (EPPs) per the Environmental Specifications below in any catalogs, marketing materials, price lists, and online ordering portal associated with this contract. Upon request of the Purchasing Entity, the Offeror if awarded, must provide documentation that each EPP has the required third-party certification(s), minimum amount of recycled content, or other environmental attributes listed in the Environmental Specifications.

The Purchasing Entity reserves the right to require the Offeror if awarded, to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Purchasing Entity under a Master Agreement or Participating Addendum, if awarded.

1.2.2 EPP Sales Reports

The Purchasing Entity reserves the right to request from the Vendor quarterly sales data over the life of this contract. This information must include details about the environmental attributes of the EPPs sold on this contract consistent with the Environmental Specifications. To facilitate consistent reporting on this contract, the Vendor may be required to submit its sales report using the Purchasing Entity's Green Sales Report Template.

Training. Over the life of the contract, the Vendor at a minimum must offer educational/marketing materials and at least one training that can be accessed by contract users explaining its EPP labeling and reporting practices.

Enforcement. The Purchasing Entity may consider failure to comply with the Environmental Specifications for this contract as well as the EPP labeling, reporting, and training requirements described above to be grounds for termination of this contract.

Exhibit 3

NASPO ValuePoint Detailed Sales Data Report Form

Field Name	Field Description
VENDOR	The awarded Contractor's name
VENDOR CONTRACT NUMBER	Lead State assigned contract number (using Lead State's numbering protocol)
STATE	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME	Customer (agency) Bill to name
BILL TO ADDRESS	Customer (agency) Bill to address
BILL TO CITY	Customer (agency) Bill to city
BILL TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
SHIP TO NAME	Customer (agency) Ship to name
SHIP TO ADDRESS	Customer (agency) Ship to address
SHIP TO CITY	Customer (agency) Ship to city
SHIP TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER	Vendor assigned order number
CUSTOMER PO NUMBER	Customer provided Purchase Order Number
CUSTOMER NUMBER	Vendor assigned account number for the purchasing entity
ORDER TYPE	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)	(mm/dd/ccyy)
SHIP DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Vendor assigned Invoice Number
PRODUCT NUMBER	Product number of purchased product
PRODUCT DESCRIPTION	Product description of purchased product
UNSPSC	Commodity-level code based on UNSPSC code rules (8 Digits)
CATEGORY	Product Category
LIST PRICE/MSRP/CATALOG PRICE	List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
QUANTITY	Quantity Invoiced (99999.999)
TOTAL PRICE	Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.99)
VAR/Reseller/Distributor	If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Energy Star Compliant	Yes = 1 No = 2 Energy Star Does not Apply = 0
Optional	More information

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MASTER AGREEMENT

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1. Definitions

a. Business Day

A day of the week recognized by the Client Agency as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

b. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

c. Client Agency Data

Any data or information of the Client Agency that Contractor receives or creates by any means and in any form in connection with this Contract, Deliverables or Performance, including data and information with respect to any one or more of the following: databases, systems, operations, facilities, and regulatory compliance.

d. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

e. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

f. Contractor Parties

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

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Connecticut Standard Terms

g. Corrective Action Plan, or CAP

A detailed written plan produced by Contractor at the request of the Client Agency to correct or resolve a Breach identified by the Client Agency in accordance with the Breach section of this Contract.

h. Deliverable

Each (1) Good, Service, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

i. Effective Date

The date that the Connecticut Attorney General's Office approves this Contract, as evidenced by its signature.

j. Force Majeure Event

Strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war, acts of terrorism, failure of or inadequate permanent power, fire, flood, earthquake, epidemics, natural disasters, and acts of God.

k. Goods

All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things.

l. Perform

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word "Perform" includes all parts of speech.

m. Purchase Order

A written or electronic document that the Client Agency issues for one or more Deliverables in accordance with the terms of this Contract.

n. Records

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

o. Services

The labor or work, necessary or appropriate for the Contractor to Perform.

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Connecticut Standard Terms

p. Site

Location(s) specified by the Client Agency where Deliverables are to be installed, Services rendered, or materials furnished.

q. Specifications

Contractor's published technical and non-technical detailed descriptions of each Deliverable's capabilities, or intended use or both, as more fully set forth in this Contract or a Statement of Work, as applicable.

r. State

The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

s. Statement of Work ("SOW")

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

t. Term

The original term of this Contract plus any extensions exercised under this Contract.

u. Termination

An end to this Contract prior to the end of its Term.

v. Title

All ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Deliverable.

2. P-Card (Purchasing Credit Card)

- a. Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.
- b. Contractor shall be equipped to receive orders issued by the Client Agency using the P- Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Client Agency or rendering of Services.
- c. The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.
- d. Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

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Connecticut Standard Terms

3. Purchase Orders

- a. This Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued Purchase Order against this Contract for Performance.
- b. The Client Agency shall issue a Purchase Order against this Contract directly to the Contractor and to no other party.
- c. All Purchase Orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase Orders issued in compliance with such requirements shall be deemed to be duly issued.
- d. A Contractor Performing without a duly issued Purchase Order in accordance with this Section does so at the Contractor's own risk.
- e. The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued Purchase Orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the Purchase Order or a copy bearing any hand-written signature or other "original" marking.

4. Delivery

- a. Delivery shall be made as ordered and in accordance with this Contract. Unless otherwise specified in this Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.
- b. In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in this Contract, such extension applying only to the particular item or shipment.
- c. Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in this Contract.
- d. All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

5. Time of the Essence

Time is of the essence with respect to all provisions of this Contract that specify a time for Performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

6. Waiver

- a. No waiver of any Breach of this Contract shall be interpreted or deemed to be a waiver of any other or subsequent Breach. All remedies afforded in this Contract shall be taken and construed

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as cumulative, that is, in addition to every other remedy provided in this Contract or at law or in equity.

- b. A party's failure to insist on strict performance of any provision of this Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or Breach.

7. Goods: Standards and Appurtenances and Inspection

- a. Standards and Appurtenances

Any Goods delivered must be standard new Goods, latest model, except as otherwise specifically stated in this Contract. Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under this Contract. Where this Contract does not specifically list or describe any parts or nominal appurtenances of equipment for the Goods, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

- b. Inspection

The Commissioner of DAS, in consultation with the Client Agency, shall determine the manner and prescribe the inspection of all Goods and the tests of all samples submitted to determine whether they comply with all of the Specifications in this Contract. If any Goods fail in any way to meet the Specifications in this Contract, the Client Agency or the Commissioner of DAS may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Goods meet the Specifications. Any decision pertaining to any such failure or rejection shall be final and binding.

8. Emergency Standby for Deliverables

If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of Connecticut, DAS and the Client Agency may request the Goods and Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have.

Contractor shall acknowledge receipt of any request made pursuant to this paragraph within 2 hours from the time that the Contractor receives it via Purchase Order or through a request to make an expedited or prioritized purchase through the State of Connecticut P-Card Program. If the Contractor fails to acknowledge receipt within 2 hours, confirm its obligation to Perform or actually Perform, as set forth in the Purchase Order or through the P-Card Program, then DAS and the Client Agency may procure the Performance from another source without further notice to Contractor and without creating any right of recourse at law or in equity against DAS or Client Agency.

9. Data: Access

Access to Contract and State Data

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning this Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the

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Client Agency and the State Auditors of Public Accounts at no additional cost.

10. Rejected Items; Abandonment

- a. The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with this Contract, direct the Contractor to remove any or all such Goods ("the "Rejected Goods") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:
 1. they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
 2. there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
 3. they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
 4. if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
 5. they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- b. The Contractor shall secure from each Contractor Party, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this Section.

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11. Working and Labor Synergies

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties, their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under this Contract.

12. Background Checks

The Contractor and Contractor Parties shall submit to and incur the cost of fingerprint supported federal and state criminal history background checks as may be required by the State, the State of Connecticut Department of Emergency Services and Public Protection, or as provided for in any State document that governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

13. Contractor Guaranties

- a. Contractor shall:
 - 1. Perform fully under this Contract;
 - 2. Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
 - 3. Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the Site, Goods, the Contractor's work or that of Contractor Parties;
 - 4. With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices.
 - 5. Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
 - 6. Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

14. Representations and Warranties Regarding Motor Vehicles

If in the course of Performance or in any other way related to this Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

- a. it is the owner of record or lessee of record of each such motor vehicle used in the Performance of this Contract, and each such motor vehicle is duly registered with the Connecticut Department

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of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

- b. each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of this Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- c. each Contractor Party who uses or operates a motor vehicle at any time in the Performance of this Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- d. each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

15. Sales and Use Report

Contractor shall deliver a sales and use report on a quarterly basis, in form and content as pre-approved by DAS or the Client Agency. The Contractor shall deliver the report within ten (10) days following the end of each calendar quarter. The Contractor shall provide the Client Agency with any additional reports as the Client Agency may request from time to time within ten (10) days following receipt of the Client Agency's written request. Timely submission of these reports is a material requirement of this Contract. All Title and property rights and interests in and to the reports and the data in the media containing the reports at all times is and will always remain vested in the State. At no time will Contractor have Title to such reports, data or media, wherever located. Accordingly, the Client Agency shall have a perpetual, irrevocable, non-exclusive, transferable right to display, modify, copy and otherwise use the reports, data, and information provided under this Section.

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16. Breach

- a. If one party (the "Non-breaching Party") determines that the other (the "Breaching Party") has failed to comply with any of the Breaching Party's corresponding Contract obligations (a "Breach"), then the Non-Breaching Party shall provide written notice of such failure to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the Client Agency may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the "Remedy Period." The Non-Breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.
- b. If the Client Agency determines that the Contractor has committed a Breach, then the Client Agency may require the Contractor to, and Contractor shall, prepare and submit to the Client Agency a CAP in connection with the identified Breach. Contractor shall provide in the CAP a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor's assessment or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the Client Agency within (10) Business Days following the Client Agency's request for the CAP for the Client Agency's review and approval. Within (10) Business Days of receiving the CAP, the Client Agency must either approve the CAP, or reject it by delivering to Contractor a written explanation for the rejection. If the Client Agency fails to accept or reject the CAP within the (10) Business Days, then the CAP is deemed to have been approved, without more. The Client Agency's explanation for the rejection must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the Client Agency will approve the CAP when the Contractor re-submits it to the Client Agency for review and approval. If the Client Agency rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the Client Agency accepts a CAP, (2) the Client Agency waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the Client Agency waives the Breach, or (5) the Client Agency makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.
- c. If the Client Agency determines that the Contractor has Breached this Contract, then the Client Agency may withhold payment in whole or in part for any amounts due pending resolution of the Performance issue, provided that the Client Agency notifies Contractor in writing prior to the date that the payment would have been due.
- d. For purposes of the Client Agency determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the Client Agency considers in determining if there was a Breach, or an instance of false or misleading statements, or both.
- e. The written notice of the Breach may include an effective Termination date. If the identified Breach is not remedied by the stated Termination date, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than twenty-four (24) hours' prior written notice before terminating this Contract.
- f. Notwithstanding any provisions in this Contract, DAS may terminate this Contract with no

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Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the Client Agency will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.

- g. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.

17. Termination

- a. Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate this Contract whenever DAS makes a written determination that such Termination is in the best interests of the State. DAS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under this Contract prior to such date.
- b. Notwithstanding any provisions in this Contract, either party, through a duly authorized employee, may, after making a written determination that the other party has Breached this Contract and has failed to remedy the Breach, Terminate this Contract in accordance with the Breach Section of this Contract.
- c. Notices of Termination must be sent certified in accordance with the Notice Section of this Contract. Upon receiving the Termination notice from DAS, the Contractor shall immediately modify or discontinue all Performance affected in accordance with the terms of the notice, undertake commercially reasonable efforts to mitigate any losses or damages and deliver to DAS or the Client Agency (as directed in the notice) all Records. The Records are deemed to be the property of the State and the Contractor shall deliver them to DAS or the Client Agency (as directed in the notice) no later than thirty (30) days after the Termination of this Contract or fifteen (15) days after the Contractor receives a written request from DAS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- d. Except for any work which DAS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and Purchase Orders and shall not enter into any further subcontracts, Purchase Orders or commitments.
- e. The Client Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Client Agency in accordance with Exhibit A, Deliverables Document or a SOW, as applicable, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Client Agency will not tender to the Contractor any payments for anticipated or lost profits. Upon request by the Client Agency, the Contractor shall assign to the Client Agency, or any replacement contractor which the Client Agency designates, all subcontracts, Purchase Orders and other commitments, deliver to the Client Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as DAS or the Client Agency (as directed in the notice) may request.
- f. Upon Termination of this Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the Sections which survive Termination. All representations, warranties, agreements and rights of the

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parties under this Contract shall survive such Termination to the extent not otherwise limited in this Contract and without each one of them having to be specifically mentioned in this Contract.

- g. Termination of this Contract pursuant to this Section shall not be deemed to be a Breach of contract by DAS or the Client Agency.

18. Continued Performance

The Contractor and Contractor Parties shall continue to Perform their obligations under this Contract while any dispute concerning this Contract is being resolved.

19. Open Market Purchases

Failure of the Contractor to Perform within the time specified in this Contract, or failure to replace rejected or substandard Goods or fulfill unperformed Services when so requested and as this Contract provides or allows, constitutes a Breach of this Contract and as a remedy for such Breach, such failure shall constitute authority for DAS, if it deems it to be necessary or appropriate in its sole discretion, to Terminate this Contract and/or to purchase on the open market, Goods or Services to replace those which have been rejected, not delivered, or not Performed. The Client Agency shall invoice the Contractor for all such purchases to the extent that they exceed the costs and expenses in Exhibit B, Price Schedule and the Contractor shall pay the Client Agency's invoice immediately after receiving the invoice. If DAS does not Terminate this Contract, the Client Agency will deduct such open market purchases from this Contract's quantities. However, if the Client Agency deems it to be in the best interest of the State, the Client Agency may accept and use the Goods or Services delivered which are substandard in quality, subject to an adjustment in price to be determined by the Client Agency.

20. Setoff

The State, in its sole discretion, may setoff and withhold (1) any costs or expenses including but not limited to costs or expenses such as overtime, that the State incurs resulting from the Contractor's unexcused Breach under this Contract and under any other agreement or arrangement that the Contractor has with the State and (2) any other amounts of whatever nature that are due or may become due from the State to the Contractor, against amounts otherwise due or that may become due to the Contractor under this Contract, or under any other agreement or arrangement that the Contractor has with the State. The State's right of setoff and to withhold shall not be deemed to be the State's exclusive remedy for the Contractor's or Contractor Parties' Breach of this Contract, all of which shall survive any setoffs and withholdings by the State.

21. Cross-Default

- a. If the Contractor or Contractor Parties Breach, default or in any way fail to Perform satisfactorily under this Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor or Contractor Parties have with DAS. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in this Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS, as if the Contractor or Contractor Parties had suffered a breach, default or failure to perform under the Other Agreements.
- b. If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements with DAS or the State, then DAS may, in its sole discretion, without more and without any action whatsoever required of the State, treat any such event as a breach, default or failure to Perform under this Contract. Accordingly, the State may then exercise

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at its sole option any and all of its rights or remedies provided for in the Other Agreements or this Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of DAS or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under this Contract.

22. Representations and Warranties

Contractor represents and warrants to the State for itself and, as applicable, the Contractor Parties that:

- a. each is a duly and validly existing under the laws of each such entity's respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by this Contract. Further, as appropriate, each has taken all necessary action to authorize the execution, delivery and Performance of this Contract and have the power and authority to execute, deliver and Perform its obligations under this Contract;
- b. each will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics; Title 4a, Chapter 51 concerning State purchasing; and (3) Title 22a, Chapter 446c, section 22a-194a concerning the use of polystyrene foam;
- c. the execution, delivery and Performance of this Contract will not violate, be in conflict with, result in a Breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- d. each is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- e. as applicable, each has not, within the three years preceding the Effective Date of this Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under this Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or Performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;
- f. each is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- g. they have notified DAS in writing whether they have had any contracts with any governmental entity Terminated for cause within the three (3) years preceding the Effective Date;
- h. none has employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Contract and it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract or any assignments made in accordance with the terms of this Contract;
- i. to the best of each entity's knowledge, there are no Claims involving Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract;

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- j. each shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that would be required disclosure on Form 8-K of the Securities Exchange Act of 1934 no later than ten (10) calendar days after becoming aware or after it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the Section of this Contract concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;
- k. each entity's participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- l. the proposal submitted by Contractor in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as defined in the Tangible Personal Property Section of this Contract) of the proposer, submitting a proposal for the same Solicitation, and is in all respects fair and without collusion or fraud;
- m. each is able to Perform under this Contract using their own resources or the resources of a party who has not submitted a proposal;
- n. if Contractor does not have plenary authority to make the representations and warranties in this Section, as applicable, on behalf of Contractor Parties, then Contractor shall enter into a written contract with Contractor Parties, in which contract Contractor Parties shall make all of the applicable representations and warranties in this Section;
- o. each has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- p. none owes unemployment compensation contributions;
- q. none is delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- r. all of each entity's vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- s. each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms of this Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from DAS or the Client Agency, such information as DAS or the Client Agency may require to evidence, in their sole determination, compliance with this Section;
- t. each either owns or has the authority to use all the Deliverables;
- u. to the best knowledge of Contractor, the Deliverables do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;
- v. to the best knowledge of Contractor, the Client Agency's use of any Deliverables in a manner consistent with this Contract shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- w. if any party shall procure any Deliverables, they shall sublicense such Deliverables and that the

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Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Deliverables; and

- x. each shall assign or otherwise transfer to the Client Agency or afford the Client Agency the full benefits of any manufacturer's warranty for the Deliverables, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

23. Further Assurances

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

24. Advertising

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS' prior written approval.

25. Contractor Changes

The Contractor shall notify DAS in writing no later than ten (10) days from the effective date of any change in:

- a. its certificate of incorporation or other organizational document;
- b. more than a controlling interest in the ownership of the Contractor; or
- c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to DAS' satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of this Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS' written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under this Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under this Contract until Performance is fully completed.

26. Contractor Responsibility

- a. The Contractor shall be responsible for the entire Performance under this Contract regardless of whether the Contractor itself Performs. The Contractor shall be the sole point of contact concerning the management of this Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of this Contract.
- b. The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

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27. Security and/or Property Entrance Policies and Procedures

Contractor shall adhere to established security and/or property entrance policies and procedures for each Client Agency. It is the responsibility of Contractor to understand and adhere to the Client Agency's policies and procedures prior to entering the Client Agency Site to Perform under this Contract.

28. Disclosure of Contractor Parties Litigation

Contractor shall require that all Contractor Parties, as appropriate, disclose in writing to Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract, no later than ten (10) calendar days after becoming aware of or after they should have become aware of any such Claims.

29. Protection of Confidential Information

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
 1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 3. A process for reviewing policies and security measures at least annually;
 4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
 5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to

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the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to, reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.

- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

30. Confidentiality; Non-Disclosure

The State shall exercise at least the same degree of care to safeguard any trade secrets or confidential information of Contractor as the State does its own property of a similar nature and shall take reasonable steps to ensure that neither the confidential information of Contractor nor any part of it will be disclosed for reasons other than its own business interests. Such prohibition on disclosures does not apply to disclosures by the State to its employees, agents or representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State will take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Contract. The State's performance of the requirements of this Section shall be subject to the State of Connecticut Freedom of Information Act ("FOIA").

All Records, Client Agency Data, and any Data owned by the State in any form, in the possession of the Contractor or Contractor Parties, whether uploaded, collected, stored, held, hosted, located or utilized by Contractor and Contractor Parties directly or indirectly, must remain within the continental United States.

31. Disclosure of Records Concerning Governmental Functions

This Contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

32. Audit and Inspection of Plants, Places of Business and Records

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and

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places of business which, in any way, are related to, or involved in, the Performance of this Contract.

- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- d. Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.
- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

33. Indemnification

- a. Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Contract for the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or this Contract. Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or non-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- b. Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.
- c. Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of Contractor or any Contractor Parties. The State shall give Contractor reasonable notice of any such Claims.

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- d. Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms of this Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims or both.
- e. Contractor shall carry and maintain at all times during the Term of this Contract, and during the time that any provisions survive the Term of this Contract, sufficient commercial general liability insurance to satisfy its obligations under this Contract.
- g. Neither party shall be liable for consequential, special, punitive, or incidental damages, or lost profits from any cause under this Contract.
- h. This Section shall survive the Termination of this Contract and shall not be limited by reason of any insurance coverage.

34. Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

35. Assignment

The Contractor shall not assign any of its rights or obligations under this Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Section and declare the Contractor in breach of Contract. Any Termination by DAS for a breach is without prejudice to DAS' or the State's rights or possible Claims.

36. Tangible Personal Property

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
 - 1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 - 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;

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3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.
- b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in section 12-1 of the Connecticut General Statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten percent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

37. Americans with Disabilities Act

Contractor represents that it is familiar with the terms of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq, and that it is in compliance with the law. Failure of Contractor to satisfy this standard either now or during the Term as it may be amended will render this Contract voidable at the option of the State upon notice to Contractor. Contractor warrants that it will hold the State harmless from any liability that may be imposed upon the State as a result of any failure of Contractor to be in compliance with the Americans with Disabilities Act.

38. Executive Orders and Other Enactments

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its Term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.
- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland

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promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

39. Non-Discrimination

- a. For purposes of this Section, the following terms are defined as follows:
1. "Commission" means the Commission on Human Rights and Opportunities;
 2. "Contract" and "contract" include any extension or modification of the Contract or contract;
 3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
 4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
 5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
 6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
 7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
 8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
 9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
 10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency

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project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

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- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box:

40. Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of

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Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

41. Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

42. Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

43. Energy Star Provision

Equipment and appliances offered pursuant to this Contract shall meet or exceed the federal energy conservation standards set forth in the Energy Policy and Conversation Act, 42 USC 6295, any federal regulations adopted thereunder, and shall meet or exceed the federal Energy Star standards established by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

44. Force Majeure

- a. The parties shall not be excused from their respective Contract obligations except in the case of Force Majeure Events and as otherwise provided for in this Contract.
- b. If a Force Majeure Event prevents a party from complying with any obligation or satisfying any conditions under this Contract, then that failure to comply will not constitute a Breach if (A) that party uses reasonable efforts to comply; (B) that party's failure to comply is not due to its failure to (i) take reasonable measures to protect itself against Force Majeure Events or (ii) develop and maintain a reasonable contingency plan to respond to Force Majeure Events; and (C) that party complies with its obligations under subsection (c) of this Section.
- c. If a Force Majeure Event occurs, then the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on its obligations under this Contract, and how long the noncomplying party expects the noncompliance to last. Thereafter, the

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noncomplying party shall update that information as reasonably necessary, or as the other party may reasonably request, whichever is more frequent. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume complying with its Performance and obligations under this Contract.

- d. Failure to provide written notice of any Force Majeure Event as soon as the failing party becomes aware of it, or failure by the other party to Act in response to the notice, does not excuse any delays or failures in Performance or obligations.

45. Notice

- a. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut Department of Administrative Services
Procurement Division
450 Columbus Boulevard, Suite 1202
Hartford, CT 06103

Attention: Greg Mooney

If to the Contractor:

Fastenal Company
2001 Theurer Boulevard
Winona, MN 55987

Attention: Zach Wise

- b. Details regarding invoices and all technical or day-to-day administrative matters pertaining to this Contract shall be directed to:

Client Agency: The individual specified in the applicable Purchase Order.

Contractor: The individual designated by Contractor in writing to the Client Agency.

46. Headings

The headings given to the Sections in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular Section to which the heading refers.

47. Number and Gender

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

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48. Amendments, Supremacy, Entirety of Contract

No amendment to or modification of this Contract shall be valid or binding unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General. Any and all Purchase Orders, Statements of Work or other documents authorized in connection with this Contract shall be subject to the terms of this Contract. Any additional terms within any such Purchase Order, Statement of Work, or other document that contradict the terms of this Contract shall have no force or effect and shall in no way affect, change or modify any of the terms of this Contract. This Contract contains the complete and exclusive statement of the terms agreed to by the parties.

49. Severability

If any term or provision of this Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

50. Risk of Loss and Insurance

The State shall not be liable to Contractor for any risk of Deliverable loss or damage while Deliverables are in transit, or while in the Client Agency's possession, except when such loss or damage is due directly to the Client Agency's negligence or intentional misconduct. Nothing in this Section is intended nor shall it be construed, in any manner, as waiving or compromising the sovereign immunity of the State.

The insurance required by this Section shall be written on an occurrence basis as opposed to a "claims made" basis and shall be on such forms, and contain such endorsements and terms, as shall be acceptable to DAS.

Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the Term of this Contract, the insurance described below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

a. Commercial General Liability

Throughout the Term and during the time that any provisions survive the Term, Contractor shall maintain, at Contractor's sole cost and expense, a policy or policies of commercial general liability insurance, including contractual liability coverage, in an amount not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property, in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of \$2,000,000 per occurrence for all damages arising out of bodily injuries to, or death of, all persons and injuries to or destruction of property per policy period. The Contractor shall cause the State and its officers, agents, and employees to be named as an additional insured on the policy and shall provide (1) a certificate of insurance (2) the declaration page and (3) the additional insured endorsement to the policy to DAS all in an electronic format acceptable to DAS prior to the Effective Date evidencing such coverage. The Contractor shall not begin Performance until the delivery of these 3 documents to DAS. Contractor shall provide an annual electronic update of the 3 documents to DAS on or before each anniversary of the Effective Date during the Term. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the State is

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contributorily negligent, but only for that portion of the negligence attributable to the Contractor and not for that portion of the negligence attributable to the State.

b. Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the execution of this Contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of this Contract, then automobile coverage is not required.

c. Workers' Compensation and Employer's Liability

Contractor shall maintain Worker's Compensation and Employer's Liability insurance in compliance with the laws of the state of Connecticut, which coverage shall include Employer's Liability coverage with minimum limits of \$100,000 for each accident, \$500,000 for disease, and \$100,000 for each employee, per policy period.

d. Excess /Umbrella Liability

Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.

51. DAS Approval of Subcontractors

DAS must approve any and all subcontractors utilized by the Contractor prior to any such subcontractor commencing any work. Contractor acknowledges that any work provided under this Contract to any State entity is work conducted on behalf of the State and that the Commissioner of DAS or his/her designee may communicate directly with any subcontractor as the State deems to be necessary or appropriate. Contractor must be responsible for all payment of fees charged by the subcontractor(s). A performance evaluation of any subcontractor must be provided promptly by the Contractor to DAS upon request. Contractor must provide the majority of the work associated with this Contract. It is understood that there may be times where conflicts due to scheduling may arise, which would lend the Contractor to utilize subcontractors to meet the Client Agency's needs. When this occurs, Contractor must alert DAS for approval of desired subcontractor before work is started.

52. Iran Energy Investment Certification

- a. Pursuant to Conn. Gen. Stat. § 4-252a, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this Section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this Section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the state of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

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53. Large State Contract Representation for Contractor

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- (2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- (3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

54. Large State Contract Representation for Official or Employee of State Agency

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

55. Consumer Data Privacy and Online Monitoring

Pursuant to section 4e-72a of the Connecticut General Statutes, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

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Connecticut Standard Terms

56. Consulting Agreements Representation

Pursuant to Conn. Gen. Stat. § 4a-81, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Conn. Gen. Stat. § 53a-157b, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Conn. Gen. Stat. §4a-81.

Consultant's Name and Title	Name of Firm (if applicable)
Start Date	End Date
	Cost

The basic terms of the consulting agreement are:

Description of services provided:

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES:

Name of Former State Agency

Termination Date of Employment

Exhibit 3
Price Schedule

Contractor shall provide the minimum discount percentages listed below for all purchases made by Client Agency under this Participating Addendum.

Category	Minimum Discount Percentage
1. Janitorial Supplies, Equipment, and Sanitation Cleaning Chemicals	46%
2. Fasteners	61%
3. Material Handling	36%
4. Plumbing Equipment	46%
5. Power Sources	41%
6. Landscaping and Outdoor Supplies and Equipment	36%
7. Lamps, Lighting, Ballasts, and Equipment	41%
8. Heating, Ventilation, Air Conditioning (HVAC)	36%
9. Hand Tools	41%
10. Power Tools	31%
11. Electrical Supplies and Equipment	46%
12. Paint and Related Supplies	41%
13. Security	41%
14. Safety	41%
15. Other	29%