

State of Utah Cooperative Contract

PARTICIPATING ADDENDUM

Automatic External Defibrillator & Accessories

State of Utah Contract #: PA5076

Master Agreement #: SW0300

Contractor: Avive Solutions, Inc.

Participating Entity: **State of UTAH**

Participating Entity Contract #PA5076

Participating Addendum Terms and Conditions:

1. Scope: This addendum covers Automatic External Defibrillator & Accessories led by the NASPO for use by state agencies and other entities located in the State of Utah authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. An amendment to this PA is not required when offerings are adjusted in the Master Agreement, so long as all additions remain within the master agreement's original scope.
2. Pricing: The pricing and rates from the Master Agreement shall flow down to this PA. An amendment to this PA is not required when pricing in the Master Agreement is adjusted / updated.
3. Administrative Fee: One-quarter of one percent (.25%) and will apply per Section 35 of Attachment A.
4. Contract Effective Dates: This PA is effective upon final signature of both parties and expires upon the expiration or termination of the NASPO master agreement. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
5. Order of Precedence:
Attachment A: Terms and Conditions for Goods and Services
Attachment B: Master Agreement
Attachment C: LIFESaver Product Terms and Conditions
Attachment D: REALConnect Product Terms and Conditions

Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.

Utah State Procurement Code, Procurement Rules, and Contractor's response to solicitation #EV00000354.

6. Participation: This NASPO Master Agreement may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Utah. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
7. Subcontractors: All contactors, dealers, and resellers authorized in the State of Utah, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO Master Agreement. The Contractor's dealer participation will be in accordance with the terms and conditions set forth in the Master Agreement.
8. Orders: Any order placed by an Eligible User for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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9. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Austin Miller
Address:	185 Valley Dr, Brisbane, CA 94005
Telephone:	415-960-3959
Email:	contracts@avive.life
Vendor Number:	VC0000285957
Commodity Codes:	42190, 93856

State of Utah Division of Purchasing

Name:	State of Utah, Division of Purchasing, Brett Whitelaw
Address:	4315 South 2700 West Fl 3, Taylorsville, UT 84129-2128
Telephone:	801-957-7149
Email:	bwhitelaw@utah.gov

10. Additional Terms and Conditions

The following terms and conditions will apply to this participating addendum.

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ATTACHMENT A:

NASPO PA STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

Modifications to #'s: 18, 27, and 37

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

- a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, and personal data as defined in Utah Code 63A19-101. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
- b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
- c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the Division and Contractor signed.
- d) **"Contractor"** means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
- e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
- f) **"Division"** means the Division of Purchasing and General Services.
- g) **"Eligible User(s)"** means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- h) **"End User Agreement"** means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
- i) **"Goods"** means all types of tangible personal property (commodities), including but not limited to materials, supplies, Custom Deliverable, and equipment that Contractor is required to deliver to the State Entity under this Contract. To the extent this Contract entails delivery or performance of services (including maintenance, installation, or product support) such services will be deemed "Goods" within the meaning of the Utah Uniform Commercial Code when reasonable to do so.
- j) **"Procurement Item"** means Goods, a supply, Services, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
- k) **"Response"** means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
- l) **"Solicitation"** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
- m) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including Custom Deliverable, supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
- n) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- o) **"Subcontractors"** means a person under contract with a contractor or another subcontractor to provide Procurement Item(s) or labor for design or construction, including a trade contractor or specialty contractor.
- p) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third-Party intellectual property.

2. GOVERNING LAW AND VENUE: This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. LAWS AND REGULATIONS: At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

4. RECORDS ADMINISTRATION: Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be

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retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.

5. **PERMITS:** If necessary, Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
8. **INDEPENDENT CONTRACTOR:** Defer to NASPO MA Terms and Conditions.
9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Defer to NASPO MA Terms and Conditions.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Defer to NASPO MA Terms and Conditions but for the following: If the Contractor cannot certify the statement contained in the NASPO MA Terms and Conditions, attach a written explanation for review by the Lead State.
14. **TERMINATION:** Defer to NASPO MA Terms and Conditions.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of Eligible Users' essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

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17. **WARRANTY OF PROCUREMENT ITEM(S):** Defer to NASPO MA Terms and Conditions.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate, or such other combination of primary and excess (including umbrella) liability coverage as may be approved by the State, provided that the total coverage available meets or exceeds the intent of these limits.
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of the Procurement Item(s) under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - d. Other insurance policies required in the Solicitation.

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

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

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** Defer to NASPO MA Terms and Conditions but for the following: F.O.B. Destination Freight Prepaid and Allowed, with transportation and handling charges included in the unit price is allowable with the express written consent of Eligible User.

22. **ACCEPTANCE AND REJECTION:** Defer to NASPO MA Terms and Conditions.

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

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

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Defer to NASPO MA Terms and Conditions.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.

27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations

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under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:

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

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Procurement Item(s) delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part. Any order placed by an Eligible User under this Contract that involves the provision of a Custom Deliverable must expressly state in the ordering document that such Procurement Item is a Custom Deliverable developed specifically for that Eligible User and Contractor must agree that it constitutes a Custom Deliverable. Procurement Items not so identified shall be deemed standard products or services of Contractor and not Custom Deliverables.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Contractor has access to or processes Confidential Information, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) comply with any requirements contained in the contract regarding permitted uses and disclosures of personal data, measures designed to safeguard personal data, and the destruction of personal data. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information, including any data breaches, in accordance with UCA 63A-19 Government Data Privacy Act. In Accordance with UCA 63A-19, Contractor must comply with all the same requirements regarding personal data as the State.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

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Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
 - Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 - Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. An End User Agreement must reference this Contract. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.
40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** Defer to NASPO MA Terms and Conditions.

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42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any Procurement Item(s) supplies, , construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such Procurement Item(s) supplies, , construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the Procurement Item(s) to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of the Procurement Item(s).
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation all travel costs associated with the delivery of the Procurement Item(s) under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** Defer to NASPO MA Terms and Conditions.
48. **STANDARD OF CARE:** The Procurement Item(s) performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having regular experience providing similar Procurement Item(s) which similarities include the type, magnitude, and complexity of the Procurement Item(s) that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third-party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** Defer to NASPO MA Terms and Conditions.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ACTIONS:** In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.
57. **TIME IS OF THE ESSENCE:** The Procurement Item(s) shall be completed by any applicable deadline stated in this Contract. For all Procurement Item(s), time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Procurement Item(s) required under this Contract.
58. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for

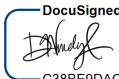
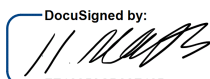
State of Utah Cooperative Contract
PARTICIPATING ADDENDUM
Automatic External Defibrillator & Accessories
State of Utah Contract #: PA5076

Solicitation purposes only and are not to be construed as a guarantee.

59. **LOCAL WAREHOUSE AND DISTRIBUTION:** If required under the Solicitation, Contractor will maintain a reasonable amount of stock warehoused in the State of Utah for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice.
60. **Restricted Foreign Entities and Forced Labor:** In accordance with Utah law, Contractors contracting with the State certify that they are not providing a “forced labor product” as defined in Utah Code 63G-6a-121. If the Contractor is providing technology or technology services, networks, or systems, the Contractor certifies that the aforementioned does not come from a “restricted foreign entity,” as also defined in UCA 63G-6a-121.

(Revision Date: 9/16/2024)

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

Participating Entity: State of Utah	Contractor: Avive Solutions Inc.
Signature: DocuSigned by:  C38BE9DAC528424...	Signature: DocuSigned by:  EE18056CB932F40B...
Name: Windy Aphayrath	Name: Meir Berkman
Title: Chief Procurement Officer	Title: Chief Strategy Officer
Date: 11/12/2025	Date: 11/12/2025



ATTACHMENT B: NASPO MASTER AGREEMENT

Procurement Master Agreement

Automated External Defibrillator (AED) & Accessories

Issued by

The State of Oklahoma

In collaboration with

NASPO Value Point



The Manufacturer identified below is hereby notified that a contract is being awarded in connection with solicitation number EV00000354, Oklahoma Statewide SW0300, which opened November 17, 2023.

Now, Therefore, in consideration of the foregoing and mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties have caused the Master Agreement to be duly executed and agree to terms contained herein.

**STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES**

Avive Solutions, Inc.

By: Amanda L. Otis
Amanda L. Otis (Feb 16, 2024 10:09 CST)

Name: Amanda Otis

Title: State Purchasing Director

Date: 02/16/2024

By: Micah Bongberg
Micah Bongberg (Feb 15, 2024 16:19 PST)

Name: Micah Bongberg

Title: Chief Commercial Officer

Date: 02/15/2024

Reviewed & approved by

OMES Legal: Tim Tuck
Tim Tuck (Feb 16, 2024 10:06 CST)

Date: 02/16/2024



Procurement Master Contract

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Procurement Master Contract

Contract Summary

This State of Oklahoma Statewide Contract ("Contract") is entered into between the state of Oklahoma by and through the Office of Management and AVIVE SOLUTIONS INC. ("Supplier") and is effective as of the date of last signature to this Contract. The initial Contract term, which begins on the effective date of the Contract, is two (2) years and there are three (3) additional one-year period options to renew the Contract.

Purpose

The purpose of this contract is to have established a competitive contract for use by participating entities to obtain FDA approved Automatic External Defibrillator (AED) Units and Accessories. As more particularly described in certain Contract Documents found herein. This contract will be made available to all levels of state, local and county government agencies as well as other public agencies authorized to utilize this contract. A contract may be awarded to one or more AED manufacturers.

This Contract memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to manufacturer.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Upon full execution of this Contract, Supplier may begin work. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Exhibit A, NASPO ValuePoint Master Terms and Conditions
 - 2.2. Exhibit B, Scope of Work
 - 2.3. Exhibit C, Cost
3. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.



Procurement Master Contract

EXHIBIT A: NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

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.

I. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for two (2) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.



II. Order of Precedence

- 3.1 **Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 3.1.1 A Participating Entity's Participating Addendum ("PA");
 - 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3 **Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

III. Participants and Scope

- 4.1 **Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 **Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating



to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (*e.g.*, purchase order or contract) used by the Purchasing Entity to place the Order.

- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.



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- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover



any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

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

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

5.4 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 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.

- 5.6 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.

V. Pricing, Payment & Leasing

- 6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 6.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
 - 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 30 days prior to the effective date.
 - 6.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
 - 6.1.4** No retroactive adjustments to prices or rates will be allowed.
- 6.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 6.3 Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of



Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VI. 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.



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- 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 Title 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.

VII. Shipping and Delivery

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



IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
 - 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.
 - 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
 - 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the



Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to 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

- 14.2** 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.

14.2.1 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.

14.2.2 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.

14.3 Confidentiality, Non-Disclosure, and Injunctive Relief

14.3.1 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.

14.3.1.1 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").

14.3.1.2 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.

14.3.1.3 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.

- 14.3.2 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.
- 14.3.2.1** 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.
- 14.3.2.2** 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.

14.3.2.3 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.

14.3.2.4 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.

14.3.3 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.

14.3.4 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.

14.3.5 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.

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

14.4 Assignment/Subcontracts

14.4.1 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.

14.4.2 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.

14.5 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.

14.6 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.

14.7 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.

- 14.8 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.

14.9 Defaults and Remedies

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

- 14.9.1.1** Nonperformance of contractual requirements;
- 14.9.1.2** A material breach of any term or condition of this Master Agreement;
- 14.9.1.3** 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;
- 14.9.1.4** 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
- 14.9.1.5** Any default specified in another section of this Master Agreement.

- 14.9.2** 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.

- 14.9.3** 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:
- 14.9.3.1** Any remedy provided by law;
 - 14.9.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 14.9.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 14.9.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 14.9.3.5** Suspension of Contractor's performance; and
 - 14.9.3.6** Withholding of payment until the default is remedied.
- 14.9.4** 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.

14.10 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.

14.11 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.

14.12 No Waiver of Sovereign Immunity

14.12.1 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.

14.12.2 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.

14.13 Governing Law and Venue

14.13.1 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.

- 14.13.2** 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.
- 14.13.3** 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.

14.14 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.

15 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.



Procurement Master Contract

EXHIBIT B: SCOPE OF WORK

I. Master Agreement Objectives:

- A. The objective of this Contract is to maintain a full catalog offering and best value pricing for both semi and fully automated AED Units and associated accessories.
- B. Master Agreement awards will only be made to manufacturers. Manufacturers should include, as a part of their response, information of approved distributors through which Participating Entities can purchase products offered in the Master Agreement. All approved distributors must be identified using the provided form in Attachment L, Approved Distributor List and maintained with the Lead State throughout the life of the contract.

II. Master Agreement Deliverables:

- A. AED Units that are approved by the FDA:
 - Category I: Fully Automated
 - Category II: Semi-automated

- B. AED Accessories

A list of the most used consumables and accessories have been identified below:

- i. Batteries
- ii. Adult Pads (electrodes)
- iii. Pediatric Pads (electrodes)
- iv. Carrying Cases
- v. Wall Mount Kits
- vi. Fast Response Kits

C. Value-Add products and services.



III. Contractor Responsibilities

A. Contractor Point of Contact for National Cooperative.

All Contractors must identify a single point of contact, along with a direct phone line and email address they can be reached. This single point of contact shall be the primary contact for both the Lead State and any Participating Entities wishing to sign a Participating Addendum or regarding the resulting Master Agreement.

B. Ordering/Invoicing

1. There is no guaranteed minimum or maximum amount for orders. Each Purchasing Entity can order products as needed.
2. The Contractor(s) must be capable of:
 - a. Accepting verbal orders via telephone with use of State(s) purchasing card (P-card);
 - b. Accepting P-card and Purchase Orders online;
 - c. Providing the Purchasing Entity using a Purchase Order with a printable order confirmation after the order is placed, and a printable itemized invoice and receipt.
 - d. Accepting payments by check, electronic fund transfer, or with State(s) P- card. The contractor will be solely responsible for the credit card user- handling fee associated with credit card purchases.
3. Ordering instructions for entities must be described, outlined, and returned with the RFP response.

C. Delivery

1. All deliveries will be F.O.B. Destination (including Alaska, Hawaii, and all U.S. Territories), freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of an Order to be shipped without transportation charges and that is back ordered will be shipped without charge.



2. All deliveries will be “Inside Deliveries” as designated by a representative of the Purchasing Entity placing the Order, unless explicitly specified otherwise. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area, such as directly to point of use or designated location. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
3. All products must be delivered in the manufacturer’s standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity’s Purchase Order number.
4. Products returned because of quality problems, duplicated shipments, etc. will be sent back to the Contractor within 30 calendar days at the Contractor’s expense, with no restocking charge and shall be replaced with specified products or the Purchasing Entity will be credited or refunded for the full purchase price.

D. Inspection and Acceptance

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 the Master Agreement resulting from this RFP. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material, latent, or hidden defects subsequently revealed when goods are used. A material defect includes a nonconformity that substantially impairs value.

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.

Acceptance Testing is the process for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The



Acceptance Testing period shall be thirty (30) calendar days, unless another time is identified in the Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

E. Product Warranty

Contractor shall include a basic warranty for all AED Units purchased that lasts for a duration of no less than one year from time of Acceptance at no additional cost to Purchasing Entities. Warranties must guarantee the safe and effective operation of devices for the duration of the warranty. The cost for repair or replacement of devices under warranty must be covered by the Contractor. In the event that an AED Unit must be repaired or replaced, the Contractor shall provide the Purchasing Entity with a loaner unit and ensure there is no gap in coverage for that location.

F. Guarantee of Equipment

Contractors shall guarantee that the equipment offered is standard new equipment and that no attachment or part has been substituted or applied contrary to the Contractor's recommendations and standard practice. Products furnished under the terms of the Master Agreement will be guaranteed against any defect due to faulty material and/or workmanship. Products must meet all federal, state, and local standards for quality and safety requirements and must be FDA approved. All equipment delivered must be first quality manufactured workmanship and finish. Contractor shall immediately notify all Participating Entities of AED recalls and provide product replacements. No remanufactured or refurbished equipment may be provided under a Master Agreement resulting from this RFP.



G. Software Updates

Contractor must provide and facilitate updates required for each AED unit to maintain full functionality over the unit's anticipated life and the methodology for performing or accessing the updates.

H. Customer Service

24/7 Call Support: Technical support via Telephone, for all items offered must always be available and must be provided for a period of no less than 3 years after purchase and acceptance.

I. Product Training

Product Documentation: All product documentation, manuals, and specifications must be provided at no additional cost.

Web/Video Training: Contractor must provide online or multimedia training at no additional cost.

IV. Additional Requirements

A. Distributors

Contractor shall ensure the Lead State Contract Administrator is provided with up-to-date information regarding the status of approved distributors. Contractor shall notify the Lead State Contract Administrator via email in the event of a change in its distributor list.

Distributors may provide the products nationally or locally. The Participating Entity may have additional procedures regarding their usage of distributors within their Participating Addendum.

B. Sustainability

The Contractor should promote corporate and local sustainability practices by aiming to reduce adverse effects on human health and the environment for the entire product lifecycle, including energy, water, safety, delivery, storage, packaging, and training.

C. Cost

1. Discounts to Remain Firm or Greater

The percentage discount from the Contractor's submitted price schedule shall not decrease for all updates or revisions of Contractor's price schedule during the life of the Master Agreement and any subsequent Master Agreement renewals; however, Contractor may increase the discount at any time. New items or replacement products are to be discounted at the same (or greater) rate as similar products or replaced items.



2. Price Negotiation During Contract Term

Contractor is expected to continuously negotiate with its suppliers to obtain improved discounts and extend improved pricing to Participating Entities. During the term of the Master Agreement Contractor must agree to negotiate in good faith to establish ceiling prices or other more favorable terms and conditions between the Contractor and its suppliers that are applicable to future orders during the term of the Master Agreement.

3. Price Lists and Updates

Contractor must furnish a physical and/or an electronic copy (at Lead State's option) of the price list(s) and periodic updates to the State of Oklahoma Lead State Administrator. Contractor must also furnish physical and/or electronic copies, at a Participating Entity's option, to all Purchasing Entities for which account numbers have been established. Contractor must distribute price lists as they become effective and in a timely manner. Price lists may be updated no more than once a quarter and price updates must be approved by the Lead State before becoming effective. Updated price lists may include new items but may not increase the price of items which previously appeared unless the price increase is requested in accordance with Section D below. Updates must be simultaneous for the entire line of products. All price lists, website access, and ordering capabilities must be supplied to the Participating Entities at no additional cost. Contractor must not add new replacement products for the purpose of a price increase. Stock keeping units (SKUs) shall be consistent and Contractor shall document discontinued items in writing when submitting replacement products.

4. Price List Access

At any time during the life of the Master Agreement issued under this RFP and for a three (3) year period from the end date of the Master Agreement, the Lead State reserves the right to request from the Contractor access to and/or a copy of the applicable price list used for the Master Agreement's pricing basis for pricing verification. Failure to provide the requested price list within three (3) business days following the Lead State's request may result in termination of the Master Agreement.



D. Price Changes

1. Price decreases or discount increases are permitted and encouraged at anytime. Price reductions announced must be applied at the time of the announcement for the products that have not yet been delivered to the Participating Entities.
2. All discounts offered must remain firm or increase during the term of a Master Agreement issued under this RFP.
3. The Contractor or Lead State may request price adjustments no sooner than 12 months from the Master Agreement execution date and no more than once per contract year. Contractors must submit a request to the Lead State at least thirty (30) days prior to the end of the current term. Requests must be in writing and must be received 30 days prior to the contract renewal date.
 - a. If the Contractor or state fails to request a price adjustment 30 days before the Master Agreement renewal date, the adjustment will be effective 30 days after the state or Contractor receives their written request.
 - b. Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U)
 - c. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June); and each (January through June six-month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive price adjustments will be allowed. All price adjustments must be approved by the Lead State prior to the implementation of the adjusted pricing. Approval shall be in the form of a contract amendment issued by the Lead State.
 - d. Approval for all price increases is dependent upon full compliance with the terms of the Master Agreement including reporting requirements.

V. Optional Services and Product Support:

Offerors may propose optional value-add services. Services included in this section are considered in addition to the minimum requirements set forth in this scope of work.



A. Service Plan

1. Offerors may propose a service agreement to provide maintenance and repair on their proposed devices. Offerors Service Agreement will should include, but is not limited to, the following services:
 - Semi-annual physical inspection of AED's
 - Battery replacement program
 - Data tracking of serial numbers, expiration dates, etc.
 - Additional software enhancements and/or updates
 - Hardware updates
 - Assurance of compliance of the AED unit with local, state, and federal regulations.
2. Offerors must be aware of local requirements for the States in which they will be servicing
3. All work performed under a Service Agreement must meet the specifications for that device.
4. Offerors may submit additional information on any additional types of service agreements they may offer, to provide maintenance and repair on their devices, i.e., standard service agreement or premier service agreement. No pricing information should be included in the technical response.

B. Product Training

1. Optional On-site Training: Offerors shall provide on-site training, as requested. The cost for on-site training should be reflected in the Offerors' cost proposal (Attachment H, Value-Add) as a separate rate.

C. Extended Warranty

Offerors may propose an extended warranty past the term of the basic warranty provided under the Master Agreement. Offerors must include a complete description of the coverage provided under the extended warranty in their cost proposal.



D. Additional Value-Add Options

Offerors may include in their Proposal additional Value-Add options not specifically requested in the scope of work. Value-Add options should not deviate from the nature of products and services requested in the scope of work and should include a thorough description of the option and how it brings value to the State. Examples include battery replacement plans, unconventional training options, alternative maintenance plans, and other services not specified.

Award of Value-Add options is subject to the approval of the Lead State.



Procurement Master Contract

Exhibit C – Cost

Exhibit C - Cost

Request for Proposals for
AED Units and Accessories
Issued by the State of Oklahoma
Solicitation Number EV00000354



Offeror Name: Avive Solutions						
Validity Period:		01/01/2024-12/31/2024				
Category I: AED Units - Fully Automated						
Item Number	Product Description	UOM	QTY per UOM	List Price	% Discount	Net Price
Avive AED with Connect Installed (It	One (1) Avive AED with Connect Installed. Comes equipped with one (1) single-use Avive AED Pad Cartridge that can be used on adults or children, one (1) medical-grade Avive USB Power Adapter, and one (1) one-meter (3.3 foot) Avive USB Charging Cable.	EA	1	\$ 1,899.99	15.00%	\$ 1,614.99

[Add additional rows as needed.]

Estimated Delivery Time: 1-2 weeks for order < 100 AED units. 3-4 weeks for orders of 100+ AEDs

Request for Proposals for
AED Units and Accessories
Issued by the **State of Oklahoma**
Solicitation Number EV00000354

Exhibit C - Cost



Offeror Name:Avive Solutions						
Validity Period:		Start/End 01/01/2024 - 12/31/2024				
Category II: AED Units - Semi Automated						
Item Number	Product Description	UOM	QTY per UOM	List Price	% Discount	Net Price
	AED only comes in fully-automatic version; semi-automatic section intentionally left blank					\$ -

[Add additional rows as needed.]

Exhibit C - Cost

Request for Proposals for
AED Units and Accessories
Issued by the State of Oklahoma
Solicitation Number EV00000354



Offeror Name:Avive Solutions						
Validity Period:		Start/End 01-01-2024 - 12-31-2024				
AED Accessories						
Item Number	Product Description	UOM	QTY per UOM	List Price	% Discount	Net Price
ACC01	One (1) single-use Avive AED Pad Cartridge. Each cartridge contains two (2) adhesive electrode pads and can be used on either adults or children for analysis and defibrillation.			\$119.99	20.00%	\$ 95.99
ACC08	One (1) Avive Training Cartridge. The Avive Training Cartridge contains two (2) pads that can be used for training purposes. NOTE: The Avive Training Cartridge is FOR TRAINING PURPOSES ONLY AND WILL NOT DELIVER DEFIBRILLATION THERAPY.			\$99.99	30%	\$ 69.99
ACC03	One (1) Avive AED Charge Stand. This wall mount stand comes with one (1) 2-meter (6.6 foot) Avive USB Charging Cable and one (1) medical-grade Avive USB Power Adapter. Wall screws and wall anchors are included.			\$99.99	10%	\$ 89.99
ACC05	One (1) medical-grade Avive USB Power Adaptor to charge your Avive Connect AED. Compatible with the Avive USB Charging Cable (not included). Input 100-240 VAC, 50-60 Hz.			\$24.99	10%	\$ 22.49
ACC07	One (1) one-meter (3.3 foot) Avive USB Charging Cable. Compatible with the Avive USB Power Adapter (not included).			\$9.99	10%	\$ 8.99
ACC02	One (1) compact, high-quality CPR/AED rescue kit containing: one (1) one-way face shield, one (1) pair of nitrile gloves (not made with natural rubber latex), one (1) set of emergency shears, one (1) medical prep razor, one (1) absorbent dry towel, one (1) antiseptic towelette, and one (1) biohazard bag.			\$28.99	20%	\$ 23.19
ACC11	One (1) Avive Hard Carrying Case, designed to keep your Avive Connect AED safe in the harshest conditions.			\$219.99	20%	\$ 175.99
ACC04	One (1) vinyl, multi-configurable wall sign measuring 14.75" x 9" with pre-drilled holes (screws are not included) to help drive awareness to your AED's location.			\$14.99	10%	\$ 13.49
PKG07	Includes one (1) compact wall cabinet with door-activated alarm and one (1) Semi-Rigid Carrying Case (ACC09) to securely store your Avive Connect AED.			\$249.99	25%	\$ 187.49
PKG08	Includes one (1) compact wall cabinet with door-activated alarm and one (1) Avive AED Charge Stand (ACC03) to securely store your Avive Connect AED.			\$249.99	30%	\$ 174.99
ACC09	Includes one (1) ultra-compact Semi-Rigid Carrying Case measuring approximately 8.9"x7.5"x4.5". Designed to securely store your Avive Connect AED, an Avive CPR/AED Rescue Kit, and a spare Avive AED Pad Cartridge or Avive Training Cartridge (not included).			\$149.99	30%	\$ 104.99

[Add additional rows as needed.]

Estimated Delivery Time: 1-2 weeks for order < 100 units. 3-4 weeks for orders of 100+ units

Request for Proposals for
AED Units and Accessories
Issued by the State of Oklahoma
Solicitation Number EV00000354

Exhibit C - Cost



Offeror Name: Avive Solutions						
Validity Period:		01-01-2024 - 12-31-2024				
Value-Add						
Value-Add: Examples include battery replacement plans, unconventional training options, alternative maintenance plans, and other services not specified.						
Item Number or Service	Product/Service Description	UOM	QTY per UOM	List Price	% Discount	Net Price
AED01L LIFESaver Plan	One (1) Avive AED with Connect. Comes equipped with one (1) single-use Avive AED Pad Cartridge that can be used on either adults or children, one (1) medical-grade Avive USB Power Adapter, one (1) Avive USB Charging Cable, and full access to REALConnect Services.	1	1	\$449.99 down payment + \$449.99/year for 5 years	12.00%	\$395.12 down payment + \$395.12/year for 5 years
	The LIFESaver plan includes replacement electrode pads if they					
	are used during an emergency or expire during the term of the					
	LIFESaver plan for no extra cost. (pad replacement offered up to					
	one set of pads per AED per year of uninterrupted payments					
	One (1) Avive AED with Connect. Comes equipped with one					
	single-use Avive AED Pad cartridge that can be used on either					
	adults or children,one medical grade Avive USB Power					
	and full access to RealConnect Program Management					
AED Trade-in Credit	Trade-in credit is applied against the cost of a new AED purchase. Trade-in Credits offered on a one-to-one basis (one trade-in credit offered per device traded in for every one new Avive Connect AED purchased). Credits are based on the type of AED traded in and market rates, but typically range from \$100-\$500 per AED. Additional trade-in credits may apply on a case-by-case basis so long as they are agreed to in writing between the Parties.	1	1		varies	approx. \$1255.75-\$855.75 depending on value of trade-in offered
REALConnect Services included in first year of purchase for item AED01 and during term of LIFESaver Plan purchase (item AED01L)	REALConnect Services are an online portal used to manage and oversee maintenance aspects of the Avive Connect AED. The Avive Connect AED can share data wirelessly by WiFi, cellular, Bluetooth, and GPS. Data includes health and status information like the location and readiness status of all AEDs. Notifications can be sent for AED use, temperature alerts, and similar conditions to help AED owners ensure their program is functioning properly. REALConnect Services include up to one electrode pad replacement per AED per year due to expiration or AED use for each AED unit on active, uninterrupted services. REALConnect Services are included in the first year of purchase (for item AED01). After the first year, owners can optionally renew REALConnect Services. and during active, ongoing subscription to LIFESaver Subscriptions (AED01L).	1	1%			

AED uses rechargeable batteries so there is NO on-going cost of replacement batteries
Dual Language at NO extra cost
Every device is equipped with Child Mode at no extra cost
Universal Pads: AED uses the same set of pads for adults and pediatric patients, so only one set of pads is necessary for adults and while in child mode

Attachment C

LIFESaver Plan – AED Lease Program Additional Terms

These additional Terms are incorporated by reference for Eligible Users who purchase the LIFESaver product. This product is a multi-year product that extends beyond the termination date of the master agreement. Any conflicts will be resolved based on the order of precedence set forth in PA5076.

1. LEASED PRODUCTS. During the term of this Agreement, and subject to the terms and conditions of this Agreement, Avive agrees to lease to Customer, and Customer agrees to lease from Avive, certain units of the Avive Automated External Defibrillator (AED) System as set established by the applicable Order (the “**Products**”). Customer may sublease the Products to a sublessee provided that (i) Customer will provide Avive with prior written notice of any intended sublessee, which Avive may reject in its sole discretion, and (ii) Customer will be liable to Avive under this Agreement for the conduct of any sublessee that would have constituted a breach of this Agreement if it had been engaged in by Customer.

2. DELIVERY, SHIPPING AND RISK OF LOSS. Avive will use reasonable efforts to deliver Products at the times specified in Avive’s acceptance of Customer’s Order. All Products delivered under this Agreement will be suitably packed for shipment in Avive’s standard containers, marked for shipment to Customer’s address specified in Customer’s Order, and shipped FOB Avive’s facility or Avive’s fulfillment center (“**Shipping Point**”), at which point risk of loss to Product shall pass to Customer. All freight, insurance, and other shipping expenses, if any, associated with the transfer of Product ordered by Customer from the Shipping Point will be specified on the Order. Avive may implement a shipping charge for any of the Products.

3. LEASE AND PAYMENT.

1. **Lease.** Customer shall pay Avive a lease fee established by the applicable Order for the term of this Agreement. Customer will be invoiced on an annual basis for the lease fees. All invoices are due and payable per the terms of the Order. If Customer pays any fees with a credit card, then Avive may seek pre-authorization of Customer's credit card account prior to purchase to verify that the credit card is valid and has the necessary funds or credit available to cover the fees to be charged.
2. **Taxes.** Customer shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, federal, state, or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.

4. OWNERSHIP. Avive shall retain title to all Products provided under the LifeSaver Plan, and Customer shall keep such Products free of all security interests, liens, and other encumbrances. Customer assumes the entire risk of loss, damage, theft, or destruction of the Products while it is in the possession of Customer or any sublessee and during transportation to and from Avive’s or any sublessee’s premises. Customer will adequately insure the Products against loss or damage while such Products are in the possession or control of Customer. If requested by Avive, Customer shall furnish evidence of such insurance. Customer shall also procure all applicable permits and licenses necessary for the operation of the Products.

5. USE, REPAIR AND SERVICE

1. **Use of the Products.** Customer agrees to use the Products only in accordance with applicable laws and as set forth in this Agreement. Customer shall not, without Avive’s written consent, make any alterations, additions, or improvements to the Products, and all right, title, and interest to all such alterations, additions,

or improvements are hereby assigned by Customer to Avive. Customer shall use the Products solely in the conduct of its business and in a careful and proper manner.

2. **Maintenance.** Customer agrees to maintain the Products in good repair, order, operating condition, and appearance, at Customer's expense and pursuant to Avive's Products care and maintenance instructions as set forth in this Agreement. In the event of any loss, theft, or damage of any kind whatsoever to the Products, Customer shall give prompt written notice to Avive of such loss, theft, or damage. Except for Avive's manufacturer's warranty, Customer shall be fully responsible for any loss, theft or damage of the Products that occurs during the term of this Agreement. Customer shall not, without Avive's written consent, allow any third party other than Avive, a sublessee, or a party authorized by Avive to repair or service the Products.

6. TERM AND TERMINATION. Unless otherwise terminated in accordance with this Section 6, this Lease Agreement will remain in full force and effect for the term identified on the Order, but in no circumstances less than five (5) years, unless otherwise terminated by or mutually extended by the Parties hereto.

1. **Termination by Either Party.** Each Party has the right to terminate this Agreement if the other Party is in material breach of this Agreement and the breaching Party fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching Party. For the avoidance of doubt, Customer's breach of Section 3(a) shall be deemed a material breach of this Agreement.
2. **Effect of Expiration or Termination.** Upon the expiration or termination of this Agreement, Customer shall, at its own cost, return the Products to Avive within thirty (30) days of the effective date of termination or expiration. In the event of early termination, Avive shall have the right to enter Customer's premises for the purposes of repossessing the Products, and Customer hereby consents to such entry. Avive will be entitled to receive from Customer all collection costs, including attorneys' fees, incurred in the enforcement of its rights under this Agreement. The Products shall be returned in as good a condition as when shipped to Customer, ordinary wear and tear excepted. In the event that the Products are not returned in such condition, Customer will be liable to Avive for the full replacement value of the Products. Following the termination of this Agreement, Customer will pay Avive any outstanding fees and return the Products to Avive and Sections 4, 6(b), 7, and 9 shall survive such termination.

7. WARRANTY. During the term of this Agreement, Avive warrants that, so long as Customer is not in breach of any provision of this Agreement, neither Avive nor its successors or assignees or anyone acting or claiming through Avive will interfere with Customer's quiet enjoyment and use of the Products.

8. WAIVERS. Customer hereby specifically waives any and all rights and remedies conferred upon Customer by UCC Sections 10508 through 10522, including (without limitation) Customer's rights to (i) cancel or repudiate this Agreement, (ii) reject or revoke acceptance of any Products, (iii) recover damages from Avive for breach of warranty or for any other reason, (iv) claim a security interest in any rejected property in Customer's possession or control, (v) deduct from rental payments all or any part of any claimed damages resulting from Avive's default under this Agreement, (vi) accept partial delivery of the Products, (vii) "cover" by making any purchase or lease of other property in substitution for property due from Avive, (viii) recover from Avive any general, special, incidental, or consequential damages, for any reason whatsoever, and (ix) seek specific performance, replevin, or the like for any of the Products. To the extent permitted by applicable law, Customer also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Avive to sell, lease, or otherwise use any Products in mitigation of Avive's damages or which may otherwise limit or modify any of Avive's rights or remedies. Notwithstanding the foregoing, nothing in this Agreement shall be construed as a waiver of Customer's right to seek a separate recovery of any rental payment that is not due and payable under this Agreement, and Customer

retains the right to seek damages or other remedies on account of Avive 's failure to perform its obligations under this Agreement.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOST PROFITS AND COST OF COVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, REGARDLESS OF WHETHER EITHER PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE IN ADVANCE, NOR WILL AVIVE AT ANY TIME BE RESPONSIBLE FOR PERSONAL INJURY OR THE LOSS OR DESTRUCTION OF ANY OTHER PROPERTY RESULTING FROM THE PRODUCTS. IN NO EVENT SHALL AVIVE'S LIABILITY TO CUSTOMER EXCEED THE FEES PAID TO AVIVE IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CLAIM.

10. FURTHER ASSURANCES. Customer agrees to cooperate with and deliver to Avive such instruments and assurances as Avive deems necessary to the confirmation or perfection of its security interest in the Products including, but not limited to, executing UCC-1 Financing Statements.

11. INSPECTION. Customer will permit any authorized representative of Avive to inspect the Products and to access and copy usage information of the Products, at reasonable times and as often as Avive reasonably requests. Any such inspection will be subject to any reasonable security requirements of Customer.

12. MISCELLANEOUS PROVISIONS. This Agreement, together with all applicable attached exhibits, contains the entire agreement and understanding between the Parties on its subject matter. No representations or statements, other than those expressly set forth herein, were relied upon by the Parties in entering into this Agreement. Customer may not assign or transfer this Agreement without Avive's prior written consent. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A. without reference to conflicts-of-law principles. Any dispute arising out of this Agreement shall be brought in, and the Parties consent to personal and exclusive jurisdiction of and venue in, the state and federal courts within San Mateo County, California. Failure or delay by either Party in exercising any right hereunder shall not operate as, or be deemed a waiver of such right or of any other right hereunder, except for violations which, after discussion and mutual agreement by the Parties, are waived in writing. This Agreement may be amended or waived only by a writing signed by an authorized representative of Avive. Except for payment obligations, neither Party shall be liable for damages for any delay arising out of causes beyond its reasonable control, including without limitation acts of God, labor disputes, riots, wars, component shortages. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and will be interpreted to reflect the original intent of the Parties.

Attachment D

REALConnect - Master Subscription Agreement

These additional Terms are incorporated by reference for Eligible Users who purchase the REALConnect product. This product is a multi-year product that extends beyond the termination date of the master agreement. Any conflicts will be resolved based on the order of precedence set forth in PA5076.

1. Definitions.

1.1 “Authorized Purpose” means access to and use of the Avive Connect AED and Services.

1.2 “Authorized User” means the specific Customer users who need to access the Service for the Authorized Purpose and who are provided with Service account logins by, or on behalf of, Avive.

1.3 “Confidential Information” means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation at the time of disclosure. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time (no more than 10 days) after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. In addition, Avive's Confidential Information includes, but is not limited to, this Agreement, any addenda hereto signed by both parties, the Service, any responses to technical support requests, and any business information, technical data, or know-how relating to the Service, any services, or any associated technology or services, including without limitation all such information disclosed in written form. Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

1.4 “Order” means an order for Products placed by Customers using one of the following methods: a) written order form which may be received via a phone order, email or Avive's website, b) work orders pursuant to Avive's Master Services Agreement, or c) other methods created by Avive from time to time.

1.5 “Products” means Avive's products.

1.6 “Service” means the online platform to which access is provided to Customer pursuant to this Agreement and which allows Authorized Users to access and use Avive's REALConnect Platform with

the Avive Connect AED, as separately licensed or leased by Customer pursuant to an Order and the General Terms and Conditions of Sale and the LifeSaver Plan – AED Lease Program Agreement, if applicable.

1.7 “Term” shall have the meaning set forth on an Order.

2. Access to Service.

2.1 Grant. Subject to the terms and conditions of this Agreement, Avive hereby grants to Customer a nonexclusive and nontransferable right during the Term to allow the Authorized Users to access and use the Service for the Authorized Purpose. Customer shall not allow access to the Service by any person other than an Authorized User or for use other than as reasonably necessary for the Authorized Purpose.

2.2 Reservation of Rights. Customer acknowledges that it is only granted access to the Service for the Authorized Purpose during the Term in accordance with Section 2.1 and agrees that it shall not use the Service except as permitted under Section 2.1. Customer acknowledges that Avive retains title to the Service. Avive hereby reserves all rights to the Service or any copyrights, patents, trademarks or other intellectual property rights embodied or used in connection therewith, except for the rights expressly granted herein.

2.3 Additional Restrictions. Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) transfer, distribute, sell, lease, license or sublicense access to the Service; (b) attempt to decompile, disassemble, or reverse engineer the Service, in whole or in part; (c) allow access to the Service by any person other than an Authorized User; (d) write or develop any derivative software or any other software program based upon the Service or any Confidential Information; (e) use the Service to provide processing services to third parties, or otherwise use the Service on a ‘service bureau’ basis; or (f) provide, disclose, divulge or make available to, or permit use of the Service by any third party without Avive’s prior written consent.

2.4 Authorized Users. Customer acknowledges and agrees that it is responsible for all use or misuse of the Service by its Authorized Users, and a breach by any such Authorized User of any term of this Agreement shall be deemed a breach under this Agreement. As between the parties, Customer agrees that it is responsible for notifying and obtaining the agreement of such Authorized Users to the restrictions with respect to the Service. Avive reserves the right to immediately suspend any or all Authorized Users’ access to the Service if Avive believes, in its sole discretion, that an Authorized User has misused the Service. Each Service account login provided to an Authorized User is personal to that specific individual and may not be transferred, sold or otherwise assigned to or shared with any other individual or entity.

2.5 Feedback. From time to time, Customer may provide to Avive (either on its own accord or at the request of Avive) feedback, analysis, suggestions and comments (including, but not limited to, bug reports and test results, and design suggestions or ideas) related to the Service (collectively, “Feedback”). Avive may also collect certain information about your usage of the Services, including but not limited to: a) when an AED is applied to a patient, b) when and if you contact 911 through the Services, c) a patient’s heart rhythm, and d) the number of times a shock is delivered to a patient ((a) –

(d) collectively, “Usage Data”). Avive does not collect patients’ personally identifiable information, and you agree to never send such information to Avive. As between Avive and Customer, all right, title and interest in and to any such Feedback and Usage Data shall be owned by Avive. Customer agrees that Avive shall have the perpetual, irrevocable and worldwide right to use, modify, license, sublicense and otherwise exploit all or part of the Feedback of Usage Data or any derivative thereof for any lawful purpose, in any manner or media now known or hereafter devised and without any remuneration, compensation or credit to Customer.

2.6 Third Party Services. In order to use certain features of the Services, you may need additional services such as RapidSOS Inc.’s service in order to facilitate communication with 911 Emergency Communications Centers across the United States. Third party services are subject to terms and conditions, specified by the third party service provider, and Avive makes no warranties with respect to these services. Your use of such the RapidSOS service will be governed by the End User License Agreement which can be found [here](#).

3. Subscription Fee.

3.1 Payment of Fees. In consideration of the access granted pursuant to Section 2.1, Customer shall pay Avive the subscription fee established by the applicable Order. Any amounts not paid within 30 days will be subject to interest of 1.5% per month, which interest will be immediately due and payable.

3.2 Taxes. All charges and fees provided for in this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government and will be established by the applicable Order. Customer shall pay or reimburse Avive for all federal, state, dominion, provincial, or local sales, use, personal property, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes on the net income of Avive).

4. Limited Warranty and Limitation of Liability

4.1 Disclaimer. Avive makes no warranties, whether express, implied, or statutory regarding or relating to the Service, or any materials or services furnished or provided to Customer under this Agreement. AVIVE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE AND SAID OTHER MATERIALS AND SERVICES (INCLUDING ANY THIRD PARTY SERVICES MADE AVAILABLE THROUGH AVIVE’S SERVICES), AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

4.2 Limitation of Liability. IN NO EVENT WILL AVIVE BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICE (INCLUDING ANY THIRD PARTY SERVICES MADE AVAILABLE THROUGH AVIVE’S SERVICES), WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF AVIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AVIVE’S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT, IN ANY EVENT, EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO

AVIVE UNDER THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT AVIVE IS NOT OBLIGATED TO NOTIFY OR DISPATCH MEDICAL, FIRE, OR POLICE ASSISTANCE AND THAT AVIVE SHALL HAVE NO LIABILITY FOR FAILING TO DO SO OR FOR MEDICAL, FIRE, OR POLICE ASSISTANCE NOT RECEIVING SUCH NOTIFICATION OR NOT ACTING ON SUCH NOTIFICATION. IF AVIVE ELECTS TO NOTIFY MEDICAL, FIRE, OR POLICE ASSISTANCE, AVIVE'S LIABILITY FOR DOING SO SHALL BE LIMITED AS SET FORTH HEREIN AND AVIVE TAKES NO RESPONSIBILITY FOR ANY FIRST RESPONDERS' OR EMERGENCY ASSISTANCE RESPONSE TO SUCH A SIGNAL. CUSTOMER AGREES THAT IT IS CUSTOMER'S SOLE RESPONSIBILITY TO PREPARE FOR ANY MEDICAL, FIRE, OR POLICE EMERGENCY. The provisions of this Section 4 allocate risks under this Agreement between Customer and Avive. Avive's pricing of the Service reflects this allocation of risks and limitation of liability.

5. Indemnification for Infringement

5.1 Indemnity. Avive shall, at its expense, defend or settle any claim, action or allegation brought against Customer that the Service infringes any copyright or trade secret of any third party and shall pay any final judgments awarded or settlements entered into; provided that Customer (i) gives prompt written notice to Avive of any such claim, action or allegation of infringement, (ii) gives the Avive the assistance, authority and information as Avive may reasonably require to settle or oppose such claims, and (iii) gives Avive the authority to proceed as contemplated herein. Avive will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of Avive.

5.2 Options. In the event any such infringement, claim, action or allegation is brought or threatened, Avive may, at its sole option and expense: (a) procure for Customer the right to continue use of the Service or infringing part thereof; or (b) modify or amend the Service or infringing part thereof, or replace the Service or infringing part thereof with other software having substantially the same or better capabilities; or, (c) if neither of the foregoing is commercially practicable, terminate this Agreement and repay to Customer a pro rata portion, if any, of any pre-paid subscription fees. Avive and Customer will then be released from any further obligation to the other under this Agreement, except for the obligations of indemnification provided for above and such other obligations that survive termination.

5.3 Exclusions Avive shall have no liability hereunder if the actual or alleged infringement results from (a) Customer's breach of this Agreement, (b) any modification, alteration or addition made to the Service or any use thereof, including any combination of the Service with software or other materials not provided by Avive, (c) Customer's failure to use any corrections or modifications made available by Avive that would not result in any material loss of functionality, (d) use of the Service in a manner or in connection with a product or data not contemplated by this Agreement, or (e) any settlements entered into by Customer or costs incurred by Customer for such claim that are not pre-approved by Avive in writing.

5.4 Limitation. THIS SECTION 5 STATES THE ENTIRE LIABILITY OF AVIVE WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

6. Confidential Information

6.1 Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees who do not have a need to know. Notwithstanding, a receiving party may disclose such Confidential Information a) that is required by law to be disclosed if the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure, or b) with its partners, distributors, affiliates and sales agents. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

6.2 Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

6.3 Return of Materials. Upon the termination or expiration of this Agreement, each party shall deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control.

7. Term and Termination

7.1 Term. The initial term of this Agreement will be established by the applicable Order (the "Term").

7.2 Termination by Customer. This Agreement may be terminated by Customer upon thirty (30) days' prior written notice to Avive, with or without cause, provided that no such termination will entitle Customer to a refund of any portion of the subscription fees.

7.3 Termination Events. Avive may, by written notice to Customer, terminate this Agreement if any of the following events ("**Termination Events**") occur:

(a) Customer fails to pay any amount due Avive within thirty (30) days after Avive gives Customer written notice of such nonpayment; or

(b) Customer is in material breach of any nonmonetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Avive gives Customer written notice of such breach; or

(c) Customer (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Customer's or Avive's treatment of Confidential Information, provisions relating to the payment of amounts due, or provisions limiting or disclaiming Avive's liability, which provisions will survive termination of this Agreement.

7.4 Survival and Termination Obligations. Immediately upon expiration or termination of this Agreement for any reason whatsoever, Customer will cease all access to and use of the Service. In addition, no later than thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return all any Confidential Information of the Avive in its possession that is in tangible form. Customer shall furnish Avive with a certificate signed by an executive officer of Customer verifying that the same has been done. Sections 2.2-2.5, 3, 4.2, 5, 6, 7.3-7.4, and 8 shall survive any termination or expiration of this Agreement.

8. Miscellaneous

8.1 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger, or consolidation, without the prior written consent of Avive. Avive may freely assign this Agreement.

8.2 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing (email sufficient) and shall be deemed sufficiently given when received, if (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate at the addresses indicated in the applicable Order, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the applicable Order, or (d) sent to the email address indicated in the applicable Order. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

8.3 Limitation on Claims. No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

8.4 No Warranties. No employee, agent, representative or affiliate of Avive has authority to bind Avive to any oral representations or warranty concerning the Service. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

8.5 Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

8.6 Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

8.7 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

8.8 Integration. This Agreement (including any Orders hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

8.9 Export. Customer acknowledges that the Service may contain features subject to United States and local country laws governing import, export, distribution and use. Customer is responsible for compliance by the Customer and its Authorized Users with United States and local country laws and regulations and shall not export, use or transmit the Service (i) in violation of any export control laws of the United States or any other country, or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Order.

8.10 U.S. Government Restricted Rights. If the Service is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that Avive provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or

Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Avive to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

8.11 Publicity. Customer acknowledges that Avive may desire to use its name in press releases, product brochures and financial reports indicating that Customer is a customer of Avive, and Customer agrees that Avive may use its name in such a manner, subject to Customer's consent, which consent will not be unreasonably withheld.

8.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts-of-law provisions. Any dispute between the parties regarding this Agreement will be subject to the exclusive venue of the state and federal courts in San Mateo, California. The parties hereby consent to the exclusive jurisdiction and venue of such courts.