

STATE OF OKLAHOMA
OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CENTRAL PURCHASING DIVISION
IN CONJUNCTION WITH
NASPO VALUEPOINT

MASTER AGREEMENT
FOR
IMMEDIATE NEED AFTERMARKET AUTOMOTIVE PARTS

SUMMARY

This Master Price Agreement is made to the Oklahoma Solicitation Number #0900006747 for Immediate Need Aftermarket Automotive Parts ("the Contract"), between IEH Auto Parts LLC dba Auto Plus Auto Parts and The Pep Boys – Manny, Moe & Jack ("Contractor") and the State of Oklahoma ("Lead State") and NASPO ValuePoint,. Pursuant to §85.5F 5 G.1, Oklahoma Revised Statutes, the State is authorized to enter into this Master Price Agreement with the Contractor for the purchase of Aftermarket Automotive Parts on an as-needed basis by State of Oklahoma Agencies, and Political Subdivision as defined. This Master Price Agreement is a cooperative procurement conducted on behalf of the National Association of State Procurement Officials ("NASPO") ValuePoint. Oklahoma is the Lead State (as defined below) for the Master Price Agreement and will be effective on the date of last signature below.

OVERALL GOAL

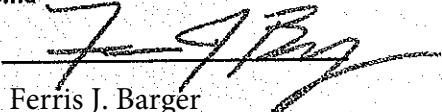
The Contractor will work in cooperation with the Lead State to furnish quality Aftermarket Automotive and Light/Medium Duty Truck Parts in a timely and efficient manner. The Contractor will be the primary point of data collection, reporting and distribution of awarded Aftermarket Automotive and Light/Medium Duty Truck Parts to the Lead State and to all Participating NASPO States.

DESCRIPTION AND SCOPE OF CONTRACT

The following documents are incorporated herein by reference and constitute the entire Contract between Contractor and the Lead State: 1. A Participating Entity's Participating Addendum ("PA"); 2. This NASPO ValuePoint Master Price Agreement which includes Exhibit A- Master Agreement Terms and Conditions, Exhibit B- Locations, and Exhibit C-Category Discounts; 3. The Solicitation; and 4. The Contractor's response to the Solicitation.

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 this Contract to be duly executed intending to be bound thereby.

State of Oklahoma

By: 
Name: Ferris J. Barger
Title: State Purchasing Director
Date: July 20, 2016

IEH Auto Plus LLC dba Auto Plus Auto Parts and the Pep Boys – Manny, Moe & Jack

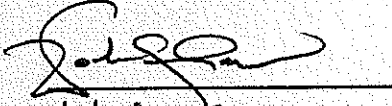
By: 
Name: Wade Sharp
Title: Senior Vice President
Date: 7/20/2016

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EXHIBIT A – MASTER AGREEMENT TERMS AND CONDITIONS

A. GENERAL TERMS, CONDITIONS AND INSTRUCTIONS

MASTER AGREEMENT ORDER OF PRECEDENCE

Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) Oklahoma Terms and Conditions
- (3) NASPO ValuePoint Master Agreement Terms & Conditions;
- (4) A Purchase Order issued against the Master Agreement;
- (5) The Statement of Work;
- (6) The Solicitation; and
- (7) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

DEFINITIONS

Addendum or Addenda: A document used to effect a contract change or modification in one or more provisions of an existing contract.

Agency: 1. One of the State's agencies such as the Government Operations Agency or the Health and Human Services Agency. 2. Sometimes used interchangeably with department.

Amendment: An addition or deletion to, a material change in, or clarification of, the RFP. Addenda shall be labeled as such and shall be made available to all interested Supplier as set forth in this RFP electronically.

Award: A department's acceptance of an offer to provide goods or services by issuance of a contract/order.

Best Value: A concept relating to requirements and Contractor selection criteria or other factors for a particular transaction that is established by the Lead State to ensure that its business needs and goals are effectively met and that the Lead State obtains the best value.

Bond: A form of collateral provided by the contractor that assures that funds are available to reimburse the State for damages incurred should the contractor refuse or fail to execute a State contract based on the contractor's proposal

Close of Business: 5:00 p.m., Central Standard Time (CST)

Competition: 1. Full and open competition: All suppliers are permitted to compete for a contract. Bidders are evaluated on the same fixed criteria. 2. Competitive approach: An acquisition approach where the dollar-value of the transaction guides use of procedures for full and open competition, competition based on fair and reasonable evaluation.

Contract: A legally binding obligation or agreement by whatever name known or in whatever format used (including purchase orders), between the State and another entity, public or private, for the provision of goods or services.

Contractor: The successful Supplier who enters into a binding agreement pursuant to this RFP. Also referred to as Supplier.

Download: Transferring data (usually a file) from another computer to the computer one is using. It is also the opposite of *upload*.

Lead State: The State conducting this solicitation and centrally administering any resulting Master Agreement. The State of Oklahoma is the Lead State for this procurement.

Local Government/Political Subdivision: a local government is a city, county, school districts, city and county, district, university or other local government body or corporation empowered to expend public funds.

Master Agreement (MA): The underlying agreement executed by and between the Lead State and the Contractor(s).

MSRP: Manufacturer's Suggested Retail Price.

Participating Entity: means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State: A member of NASPO VALUEPOINT who has indicated its intent to participate by signing an Intent to Contract, or who subsequently signs a Participating Addendum where required, or another state authorized by NASPO VALUEPOINT to be a party to the resulting Master Agreement through the execution of a Participating Addendum.

Product Group: Automotive Parts Categories offered in response to this RFP. Also may be referred to as commodities and or goods.

Proposal: The complete response of the Supplier(s) submittal, including all the required forms, and certifications, setting forth Supplier's prices for the Automotive Parts Categories described in the specifications.

Purchasing Entity: means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

Remanufactured Items: The term "remanufactured" as used in this Master Agreement shall mean the part in question will be remanufactured so that all parts shall meet the Original Equipment Manufacturers (OEM) specifications.

Request for Proposal (RFP): The entire solicitation document, including all parts, sections, exhibits, attachments, and any issued Addenda which sets forth requirements and specifications of a contract to be awarded through a competitive procurement process.

Sourcing Team: An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP.

Supplier: An individual, sole proprietorship, firm, partnership, corporation, or any other business venture who submits, or has identified their intention to submit, a proposal to the Lead State in response to the RFP.

SCOPE

The Contractor will provide the entire portfolio of quality Aftermarket Automotive Parts to Lead State, Participating Entities and local governmental agencies in a timely and efficient manner. The Contractor will be the primary point for, data collection, reporting, and distribution of Aftermarket Automotive Parts to the Lead State. Using a discount-off Manufacturer Suggested Retail Price (MSRP) List model, encompassing Aftermarket Automotive Parts for gas, diesel, compressed natural gas (CNG), electric and hybrid vehicles.

PERIOD OF PERFORMANCE

The term of this Agreement is effective for one (1) year from the date of approved contract document with the option to extend four (4) additional one (1) year periods upon approval by the Lead State and no work shall begin until such time.

During this period of performance, the Contractor(s) will receive purchase orders from the Lead State and Participating Entities for purchases made via the Aftermarket Automotive Parts Contract.

CONTRACTOR RESPONSIBILITIES

The Contractor will provide a Contract Manager in accordance with section 6.44 that will work with the Lead State's Contract Administrator to fully implement and manage the contract.

The Contractor will work closely with subcontractors (if applicable) to fully implement and manage the Aftermarket Automotive Parts Contract.

The Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the contract. In addition, the Contractor will have a customer service unit in accordance with Section 6.47 that is dedicated to this contract, to respond to user inquiries.

The Contractor must notify the Lead State of Contract Manager change in writing within 10 calendar days of the change.

The Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems that have been outstanding for more than five (5) working days

STATE RESPONSIBILITIES

The Lead State will provide a Contract Administrator that will work with the Contractor's Contract Manager to fully implement and manage the contract.

The Lead State Contract Administrator is specified and is the contact person for issues relating to the Master Agreement.

The Lead State Contract Administrator will be responsible for reviewing and approving the following deliverables: Submission and Approval of Aftermarket Automotive Parts Catalog.

Purchasing Entities will ensure the Contractor has proper access to the appropriate areas for deliveries for the Aftermarket Automotive Parts Contract.

The Lead State will review and approve implementation plan.

The Lead State reserves the right to review Contractor's outreach marketing material.

TASKS

The Contractor agrees to perform the required tasks in accordance with the Aftermarket Automotive Parts Master Agreement.

Any exception to the requirements contained in the Contract may only be authorized by the Lead State Contract Administrator or his/her designee through an amendment.

DELIVERABLES

Contractor shall meet all requirements identified in the Technical Requirements section.

BILLING INFORMATION

The Contractor shall submit invoices in accordance with section Invoicing.

PARTICIPATING STATES

In addition to the Lead State, Other entities may become Participating Entities after award of the Master Agreement. State-specific terms and conditions that will govern each state's Participating Addendum may be incorporated into the Participating Addendum after award.

After Master Agreement award, Participating States and Entities may add individual state terms and conditions when signing Participating Addendum with Contractors.

Political subdivisions and other entities (including cooperatives) authorized by participating state's statutes to use state contracts are subject to the approval of the Participating State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the Participating State Chief Procurement Official. The requirements for participating are explained in Attachment B, NASPO ValuePoint Master Agreement Terms and Conditions.

PRODUCTS

The following nineteen (19) categories of Aftermarket Automotive Parts as shown below:

NUMBER	CATEGORY
1	Air Conditioning
2	Alternators and Starters
3	Batteries
4	Bearings, Ball and Roller
5	Belts and Hoses
6	Brakes
7	Electrical and Ignition
8	Emission and Exhaust
9	Engine and Drive Train
10	Filter, Oil, Gas, Air and Transmission
11	Gaskets and Seals
12	Heating and Cooling (Engine)
13	Lamps, Lighting and Mirrors
14	Oils, and Lubricants, Regular and Synthetic
15	Pumps, Fuel and Water
16	Suspension, Shocks, Struts and Steering
17	Wipers/Washers
18	Shop Supplies and Equipment
19	Winter Accessories

PARTICIPATING ADDENDUMS

A Participating Addendum must be executed by any Participating Entity that adopts this NASPO VALUEPOINT Master Agreement.

A Participating Addendum shall be executed for each Contractor by the individual States desiring to use their Master Agreement.

A Participating Addendum allows for each Participating Entity to add additional terms and conditions that may be unique to their State.

The Participating Entity and the Contractor shall agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum. States are not mandated to sign a Participating Addendum with all awarded Contractor.

If a State does not participate, the State Chief Procurement Official may approve any Participating Entity within its jurisdiction to sign its Participating Addendum with awarded Contractor(s).

The Order of Precedence in the Attachment C, Special Provisions NASPO VALUEPOINT Master Agreement Terms and Conditions, shall apply to the executed Participating Addendum.

AFTERMARKET AUTOMOTIVE PARTS CATALOG

The Contractor does have a published commercially available catalog, CONTRACTOR maintains a commercially available catalog. This catalog defined as a manufacturer's suggested retail price (MSRP) list, schedule, or other forms. Is regularly maintained by the contractor and Is available online for inspection by customers, and/or the general public.

The published commercially available catalog shall include, at a minimum:

- The contractor's stock keeping number (SKU)
- A complete and accurate description of the item

- The unit of measure (UOM)
- The quantity in the unit of measure (QUOM)
- List Price/MSRP

AVAILABILITY

The Contractor will not have any viewing restrictions for State departments, Local Government agencies and other Participating Entities trying to access the electronic catalogs and will provide all NASPO members with a login and password to their internet portal.

PRODUCT SUBSTITUTION

Unless specifically requested by Purchaser, no product substitutions will be allowed.

CORE EXCHANGE/CHARGES

All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned to the Proposer. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.

PRICE ADJUSTMENTS

A decrease in the level of categories discount shall not be considered during the entire term of the Master Agreement nor for any subsequent Master Agreement extension. However, an increase in the level of categories discount may be considered at any time during the term of the Master Agreement and during each subsequent Master Agreement extension.

RETAIL SALES ESTABLISHMENTS

Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide:

1. Walk-In and will-call order system during regular work hours.
2. Provide customer service associate to support walk-in and will-call order system.
3. Provide itemized sales receipts for all walk-in and will-call transactions.
4. Availability of delivery.
5. Acceptance of State P-Card.

These facilities shall be operated in accordance with State Law and comply with all zoning requirements as implemented by local, county or State governments.

Contractor shall update the retail sales establishment list annually after contract award.

The Contractor is able to provide Retail Sales Establishments to the various agencies utilizing this Master Agreement through 1600 total CONTRACTOR stores across the US made available to those participating States with this Master Agreement.

A List of Participating Stores is enclosed in Attachment A. A list may be provided to all States who participate in this program. The Contractor agrees to accept orders from any of the State agencies, Local Governmental agencies and all other Participating Entities.

ORDERING

The Contractor shall accept orders from any of the State agencies, Local Governmental agencies and Participating Entities.

PURCHASE EXECUTION

State agencies will submit orders on a Purchase Order via one of the ordering methods as specified below, Ordering Methods. Local Government agencies and other Participating Entities may use their own approved Purchase Order document.

The Contractor shall not accept purchase documents from State agencies, Local Government agencies and Participating Entities containing non-contract items. This will be monitored at a local level between the customer and the servicing CONTRACTOR store.

MINIMUM ORDER

There is no minimum order on this contract.

ORDERING METHODS

Contractor shall accept, the following ordering methods:

- Telephone
- Electronic (email)
- Facsimile
- US Mail
- Over-the-counter/walk-in
- Online (internet)

Phone Orders

Contractor will accept order via telephone as parts of this contract. A toll-free telephone number to be used by ordering agencies for placing orders. Telephone orders must be accepted between the hours of 7:00 AM and 7:00 PM, Monday through Saturday, in the time zone the order is placed.

Electronic (email) Orders

Contractor(s) will accept orders via email as part of this contract. An email address to be used by ordering agencies for placing orders is to be in place before the commencement of this contract.

Facsimile Orders

Contractor(s) will accept order via facsimile as part of this contract. A toll-free facsimile number to be used by ordering agencies placing orders is to be in place before the commencement of this contract. Facsimile orders must be accepted between the hours of 7:00 AM and 7:00 PM, Monday through Saturday, in the time zone the order is placed.

Internet/Web Orders

Contractor(s) will accept orders via internet/web as part of this contract. Web address to be used by ordering agencies for placing orders is to be in place before the commencement of this contract. Internet/web access must be 24 hours but orders must be accepted by the contractor between the hours of 7:00 AM and 7:00 PM, Monday through Saturday, in the time zone the order is placed.

U.S Mail Orders

Contractor(s) will accept orders via U.S. Mail as part of this contract. Contractor will have the capability to received orders by mail in place before the commencement of this contract.

EMERGENCY ORDERS

Contractor(s) must provide toll-free, after hours, telephone number(s) and contact name(s) for placing emergency orders. Emergency orders must be accepted 24 hours a day, seven (7) days a week. Emergency Contacts and phone numbers may be obtained from every CONTRACTOR store nationwide and will be provided to the Ordering Entities.

ORDERING CONTACT

Contractor shall provide the following ordering information to be used by ordering agencies:

- Email address
- Toll free phone number
- Toll free fax number
- Mailing address

As each ordering contact will depend upon the CONTRACTOR store in proximity to the agency utilizing the Master Agreement, separate contact information will be provided for each of the CONTRACTOR store locations and the Distribution Center Main Contacts.

CONTRACTOR ORDERING INFORMATION

IEH Auto Parts LLC dba Auto Plus Auto Parts and the Pep Boys – Manny, Moe & Jack
901 N. Lenola Rd
Moorestown, NJ 08057
Toll Free Phone Number: 800-257-7972
Toll Free Fax Number: 800-723-1377
Email: s498@autoplusap.com
Contact Name: Eric H. Levy

ORDER CONTACT - EMERGENCY

Contractor shall provide ordering information in the event of a declared emergency, of the party responsible with whom the utilizing agency should contact.

The ordering information will be provided to the ordering entities and shall include:

- Email address
- Toll free phone number
- Toll free fax number
- Mailing address

ORDERING CONTACT-EMERGENCY
IEH Auto Parts LLC dba Auto Plus Auto Parts and the Pep Boys – Manny, Moe & Jack
901 N. Lenola Rd
Moorestown, NJ 08057
Toll Free Phone Number: 800-257-7972
Toll Free Fax Number: 800-723-1377
Email: s498@autoplusap.com
Contact Name: Jim Strecker

ORDER ACKNOWLEDGEMENT

The Contractor will provide the ordering agencies with an order receipt acknowledgment via email or facsimile within twenty-four (24) hours after receipt of an order. The acknowledgement will include:

- Purchasing Entity Name
- Purchase Order Number
- Description of goods and/or related products purchased
- Total Cost
- Delivery Date
- Identification of any Out of Stock Items

During the life of the Master Agreement, the Contactor shall work with the Lead State to provide any other future changes the Lead State may deem necessary.

OUT-OF-STOCK REMEDY

In the event of an out-of-stock item, the ordering agencies shall have the option to either request back order or cancel the item from order, upon receipt of order acknowledgement identifying that said items are unavailable.

Under no circumstances is the Contractor permitted to make unauthorized substitutions or cancellations, without the authorization of the Purchasing Entity.

RE-MANUFACTURED PARTS

The Contractor may provide remanufactured parts when new parts are not available and with authorization of the Purchasing Entity. Used, previously installed or shop worn parts shall not be accepted.

DELIVERY LOCATIONS

The Contractor will agree to make deliveries (statewide) to all Participating States and Purchasing Entities to the location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.

DELIVERY SCHEDULES

The Contractor will deliver product within the one (1) allotted business days per the contract requirement, unless otherwise agreed to by the Purchasing agency. Additionally, due to varying delivery hours per individual agency, it will be CONTRACTOR's responsibility to check each facility, prior to delivery, for the specific delivery hours.

Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time

frame specified in the contract.

DELIVERY FROM COMMERCIAL OUTLETS

Delivery of standard in-stock items to locations within five (5) miles from company's commercial store shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

OVER THE COUNTER DELIVERY

Contractor shall provide over the counter order and delivery at all of its commercial locations.

SECURITY REQUIREMENTS FOR INSTITUTIONS

The Contractor understands that deliveries may have to be made to locations inside secure institutional grounds that require clearances to be made for delivery drivers. Additionally CONTRACTOR understands that they will be responsible for contacting the secure location in order to understand security clearance procedures, hours of operations for deliveries, dress code and all other rules associated with deliveries.

These security clearance procedures may vary from facility to facility.

Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.

FREE ON BOARD (F.O.B.) DESTINATION (SHIPPING TERMS)

All prices offered shall be F.O.B. destination and allowed for all Participating States. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations.

All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.

MANUFACTURER WARRANTY

The Contractor agrees to honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. The Contractor understands that if warranty extends beyond the term of the Contract, the Contractor must agree to provide warranty services throughout the life of the warranty.

These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog.

Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

SEE ATTACHMENT C – WARRANTY INFO

RETURN POLICY

Items purchased under this contract may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of its delivery.

Contractor shall be responsible for picking up all returns within seven (7) working days of advance, written notification to include email and fax.

CREDIT POLICY

Contractor will be responsible for the credit or replacement of all products, including those covered by manufacturer warranties.

Contractor shall provide credit for the following items:

- Items ordered or shipped in error
- Items that are returned within 30 calendar days of delivery
- Defective or freight-damaged items

The Contractor cannot require the Purchasing Entity to deal directly with the manufacturer. In all cases, the Purchasing Entity shall have the option of taking an exchange or receiving a credit.

Contractor shall provide credit for the following items:

- Items ordered or shipped in error
- Items that are returned within 30 calendar days of delivery
- Defective or freight-damaged items

The Contractor cannot require the Purchasing Entity to deal directly with the manufacturer. In all cases, the Purchasing Entity shall have the option of taking an exchange or receiving a credit

RESTOCKING FEES

Contractor will not impose a restocking fee on the Purchasing Entity under this Master Agreement for the following:

- Item(s) returned that were damaged upon receipt
- Incorrect items shipped
- Items that are returned unopened in an original packaging
- Items that are returned, but exchanged for other item

PRODUCT RECALL PROCEDURES

The Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator.

Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Purchasing/Participating Entities may work with such manufacturer to handle any applicable recall issues.

PAYMENT

State departments and Local Government agencies may pay by check, electronic funds transfer, or with the Participating Entity's credit card. For the Lead State, payments are to be made in accordance with the State's General Provisions or not more than 45

days after the date of acceptance of goods or services. Other Participating Entities may require their own payment terms and for those Participating Entities their individual payment terms apply.

INVOICING

The Contractor's invoice must identify, at a minimum, the information listed below:

1. Lead State's Contract Number
2. Agency Order Number (Purchase Order Number)
3. Agency Billing Code
4. Purchasing Entity Name
5. Delivery Address of the order
6. Product(s) description
7. Manufacturer's product number
8. Quantities issued
9. Price per unit(s) and extended price(s)
10. Date ordered
11. Date delivered
12. Listing of returns or backorders
13. Any prompt payment discounts,
14. Discounts (i.e. Cash Discounts, Prompt Payment Discounts, volume Discounts, etc.) If applicable, discounts shall be clearly indicated on each invoice as a written statement. (Sample: "Prompt Payment discount: 1% 20 Days").
15. Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency.
16. Any other mutually agreed upon requirements the State may later deem necessary.
17. Within 15 days from contract award, the Contractor must submit a preliminary copy of their invoice to the Lead State Procurement Officer for approval. The Lead State shall review and determine acceptability of the invoice and the authorized copy shall become the standard for this Master Agreement.

Other Participating Entities may have their own invoicing requirements.

State Purchasing Card (P-Card)

For the Lead State, Acceptance of the Purchase Card (P-Card) requires that no charges be posted to the P-Card prior to the shipping of goods. Only the total of goods shipped may be charged to the P-Card upon Shipping. All back-ordered goods cannot be charged until received by the supplier and shipped to the State of Oklahoma end user. Upon shipment, an itemized invoice must be emailed to the order requestor within 2 business days of the charge.

For the Lead State, All P-Card invoices must be processed separately from other payment methods and include Invoicing elements, which Contractor agrees to abide by at all participating CONTRACTOR Stores specific to the Lead State. Contractor understands that Participating Entities may use their own Purchase Card Type programs and will agree to accept this payment type at participating CONTRACTOR Stores.

Other Participating Entities may have their own Purchase Card Type programs. For those Participating Entities, their individual Purchase Card rules apply.

CONTRACT USAGE REPORT

CONTRACTOR will track Statewide sales for the State of Oklahoma and all Participating Entities through a Point of Sale system in order to supply quarterly reporting that will include the Ordering Agency's name, State/Local Spend, Invoice Number, Purchase Order Date, Contract Line Item Number, Contract Line Item Group ID, UNSPSC Code, Manufacturer, Manufacturer Part Number, SKU#, Item Description, Unit of Measure, Quantity in Unit of Measure, Quantity, List Price, Contract

STATE OF OKLAHOMA
OFFICE OF MANAGEMENT AND ENTERPRISES SERVICES
MASTER PRICE AGREEMENT - #0900006747

June 22, 2016

Unit Price, Contract Discount, Extended Contract Price Paid, and Index Date in an Excel format by the designated due date for the appropriate quarter.

Addendum for term renewals may be approved only if all quarterly reports have been submitted to the Lead State within the time frame identified.

NASPO ValuePoint SUMMARY AND DETAIL USAGE REPORTS

In addition to Lead State reports required by this solicitation, the Contractor shall submit quarterly sales reports directly to NASPO ValuePoint as set forth in the Attachment B.

AD HOC REPORTING

The Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. The Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted.

Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.

CONTRACTOR RESPONSIBILITY

The Lead State requires Master Agreement(s) resulting from RFP 0900006747 be issued to a prime Contractor who shall be responsible for successful contract performance of the Master Agreement. The prime Contractor shall be responsible for successful performance of any and all of their subcontractors.

The Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor shall not in any way represent themselves in the name of the Lead State without prior written approval.

STATE CONTRACT ADMINISTRATOR

The Lead State Contract Administrator is the contact person for issues relating to the Master Agreement. Any exception to the requirements contained in the Contract may only be authorized by the Lead State Contract Administrator or his/her designee through an amendment.

Theresa Johnson, Contracting Officer

5005 N. Lincoln Blvd., Suite 300

Oklahoma City, OK 73105

Telephone: 405-521-2289

Email: Theresa.johnson@omes.ok.gov

CONTRACTOR CONTRACT MANAGER

The Contractor will assign a National Account Manager contact person for Contract management purposes. The Contractor certifies the Contract Manager is authorized to make decisions on behalf of the Contractor.

Eric. H. Levy
901 N Lenola Road
Moorestown, NJ 08057
Telephone Number: 856-778-1400 Ext.4012
Facsimile Number: 856-439-5903
Email: rlevy@autoplusap.com

CHANGES IN CONTRACT MANAGER

The Contractor must notify the Lead State of Contract Manager change in writing within 10 calendar days of the change.

CONTRACTOR NAME CHANGE

An addendum is required to change the Contractor's name as listed on this agreement. Contractor agrees to notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the addendum. Payment of invoices presented with a new name cannot be paid prior to approval of said addendum.

CUSTOMER SERVICE

Contractor will have a customer service unit that is dedicated to this Contract. The customer service unit shall be staffed with individuals that are trained in the requirements of this Contract and have the authority to take administrative action to correct problems that may occur.

The Contractor(s) shall respond to customer inquiries within one (1) business day of initial contact.

NASPO ValuePoint ADMINISTRATIVE FEE

NASPO ValuePoint administrative fee of one-quarter of one percent (0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee is based on sales of products (less any charges for taxes and shipping). The NASPO Valuepoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal

PARTICIPATING STATE ADMINISTRATIVE FEE

If a Participating State requires a state administrative fee, each fee will be negotiated and articulated in that State's Participating Addendum.

SERVICE LEVEL

The Lead State, as part of an on-going quality management effort, will measure the user agencies' satisfaction during the term of the Contract.

Measurement will identify areas where service levels can be improved. Contractor must agree to work with the Lead State in resolving any issues resulting from the measurement of customer satisfaction. The Contractor and the Lead State Contract Administrator will work together to continually monitor the success levels of the Master Agreement.

TRANSITION PLAN AT END OF CONTRACT

The Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place.

B. OKLAHOMA TERMS AND CONDITIONS

1. Definitions

Acquisition

The term (“Acquisition”) means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act.

Addendum or Addenda

The term (“Addendum or Addenda”) means a document used to effect a contract change or modification in or more provisions of an existing a contract.

Lead State

The term (“Lead State”) means the State centrally administering any resulting Master Agreement. The State of Oklahoma is the Lead State for this Master Agreement.

2. Master Agreement Modification

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Purchasing Director of the Lead State.

3. Assignment/Subcontracts

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 State Purchasing Director of the Lead State.

4. Changes in Contractor Representation

The Contractor must notify the State Purchasing Director of the Lead State of changes in the Contractor’s key administrative personnel, in writing within 10 calendar days of the change. The State Purchasing Director of the Lead State reserves the right to approve changes in key personnel, as identified in the Contractor’s proposal. The Contractor agrees to 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.

5. Indemnification

In connection with indemnification under the Master Agreement, when the Lead State or any Lead state agency is a named defendant in any filed or threatened lawsuit, the defense of the Lead State or Lead State agency shall be coordinated by the Attorney General of Oklahoma or, in the alternative, the Attorney General of Oklahoma may authorize the Vendor to control the defense and any related settlement negotiations; provided, however, Contractor shall not agree to any settlement of claims against the Lead State or Lead State agency without obtaining advance written concurrence from the State Attorney General. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to Contractor, Contractor shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Master Agreement and shall remain responsible to indemnify the applicable Indemnified Parties.

6. Payment

For transactions between the Lead State and the Contractor, invoices are to be paid in arrears after products have been delivered and accepted or services provided and accepted pursuant to 74 O.S. § 85.44(B). Payment by the Lead State will be made within no more than forty-five (45) days from the date a proper invoice is received and the goods have been delivered and accepted or services provided and accepted pursuant to 62 O.S. § 34.71. Interest on late payments made by the Lead State is governed by 62 O.S. § 34.72.

7. Audits and Records Clause

For transactions between the Lead State and the Contractor, 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 shall 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 shall survive for a period of seven (7) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. If an audit, litigation, or other action involving the above-referenced documents, required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

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.

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

8. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies that the Contractor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B. Have not within a three-year period preceding the Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
- D. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

9. Choice of Venue

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

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; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party. Where the claim is adjudicated in the United States District Court of the Lead State, it must be brought and adjudicated in the Western District.

10. Extension of the Master Agreement.

The Lead State may extend the term of this Master Agreement for up to ninety (90) day intervals if mutually agreed upon by the State Purchasing Director of the Lead State and the Contractor.

11. Gratuities

The right of the Contractor to perform under this Master Agreement may be terminated by written notice if the Procurement Official as specified in E.4. of the Solicitation determines that the Contractor, or its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Central Purchasing Division of the Lead State.

12. Pricing

In accordance with 74 O.S. § 85.40, all travel expenses to be incurred by the Contractor in the performance of the Master Agreement shall be included in the total price/ amount. All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least ninety (90) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

13. Type of Contract

This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies/services specified.

C. NASPO ValuePoint Master Agreement Terms and Conditions
Addendum

This Addendum 1 (“Addendum”) is an Amendment to the NASPO ValuePoint Master Terms and Conditions entered into between IEH Auto Parts LLC dba Auto Plus Auto Parts and The Pep Boys – Manny, Moe & Jack, affiliates successors and assigns and the State of Oklahoma by and through of the Office of Management and Enterprise Services. This Addendum shall merge and become part of the NASPO ValuePoint Master Terms and Conditions, and the terms and conditions in this Addendum shall supersede any terms and conditions that directly conflict with the NASPO ValuePoint Master Terms and Conditions. Notwithstanding the foregoing, the Master Agreement Order of Precedence shall not be affected by this Addendum.

1. The parties agree that Section 14(b)(2)- Indemnification-Intellectual Property is hereby replaced with the following provision:

Promptly after receipt by an indemnified party of notice of any indemnified claims, liabilities or expenses, the indemnified party shall promptly notify the Indemnifying Party in writing; provided, however, that the failure or delay to give such notice shall not relieve the Indemnifying Party from its obligations under this Section 14, unless such failure or delay materially prejudices the Indemnifying Party's ability to defend such claim, liability or expense. Upon receipt of such notice, the Indemnifying Party shall be entitled to participate the defense of such claim, liability or expense, or, at its option, may assume the defense thereof; provided, however, that the Indemnified Party shall be entitled to retain its own counsel for such defense at the Indemnifying Party's expense, if counsel employed by the Indemnified Party has advised the Indemnifying Party that representation of the Indemnified Party by the same counsel would be inappropriate under the applicable standards of professional conduct due to actual or potential conflicts of interest. Neither party shall agree to the settlement of any claim, liability or expense giving rise to any claim for indemnification hereunder or make any admission of any liability on behalf of the other, without the prior written consent of such other party.

2. The parties agree that Section 19- License of Pre-Existing Intellectual Property is hereby Replaced with the following provision:

Contractor grants the Purchasing Entity a perpetual, irrevocable, non-exclusive, royalty free license in Contractor’s Intellectual Property, and its derivatives, used or delivered under this Master Agreement, for the limited purpose set forth under this Master Agreement, but not created under it (“Pre-existing Intellectual Property.”)

Nothing in this Master Agreement shall be construed as transferring any right, title or interest in Contractor's Pre-Existing Intellectual Property assets, trademarks, or copyrights, notwithstanding the license to use such Pre-Existing Intellectual Property mentioned above.



Attachment C

NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) Oklahoma Terms and Conditions
- (3) NASPO ValuePoint Master Agreement Terms & Conditions;
- (4) A Purchase Order issued against the Master Agreement;
- (5) The Statement of Work;
- (6) The Solicitation; and
- (7) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall 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.

2. Definitions

Acceptance means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

Acceptance Testing means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

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

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.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. 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 and the District of Columbia. 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.

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

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

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to later participate in the Master Agreement

Product 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 Products, supplies and services, and

products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

3. Term of the Master Agreement

The initial term of this Master Agreement is for one (1) year. This Master Agreement may be renewed beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State.

5. Assignment/Subcontracts

a. 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.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

6. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 60 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

7. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 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 shall 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, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

8. Confidentiality, Non-Disclosure, and Injunctive Relief

a. 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. 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"). 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. 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.

b. 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. 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. 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. 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. 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.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in 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.

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

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint'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. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Defaults and Remedies

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (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; or
- (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
- (5) Any default specified in another section of this Master Agreement.

b. 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 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 shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. 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:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. 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 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 a Purchase 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 shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

11. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, 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 shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. 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 shall be shipped without charge.

b. 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 other than a loading dock, front lobby, or reception area. 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 Offeror. If damage does occur, it is the responsibility of the Offeror to immediately notify the

Purchasing Entity placing the Order.

c. 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 Ordering Entity's Purchase Order number.

12. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to 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.

13. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14. Indemnification

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("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 ("Intellectual Property Claim").

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

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order 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

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(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 it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. 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 it 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. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

15. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have 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 agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

16. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement, which include the Oklahoma Terms and Conditions and NASPO ValuePoint Master Agreement Terms and Conditions, and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, 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.

17. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. 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 Best's 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.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

(1) Commercial General Liability 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/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

d. 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) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

18. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, 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 license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

20. No Waiver of Sovereign Immunity

In no event shall 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.

This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating 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.

21. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. The resulting Master Agreements permit Purchasing Entities to define 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.

c. 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.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document compliance with the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor’s proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall 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.

h. 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. Contractor is reminded that 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.

i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to 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 or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, 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.

22. Participants

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The Oklahoma Terms and Conditions and 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. By way 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.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to 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.

c. 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. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of other Purchasing Entities. 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 data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located.

23. Payment

Payment for completion of a contract order is normally made within 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. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

24. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

25. Records Administration and Audit

a. 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 shall 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 shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. 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.

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

26. Administrative Fees

a. The 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 shall 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 proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 26a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

27. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Section ___ Attachment ___.

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

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

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

28. Standard of Performance and Acceptance

Any standard of performance under this Master Agreement applies to all 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 or other time period identified in the solicitation 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 accepted and no charges shall be paid until the standard of performance is met. The warranty period will begin upon Acceptance.

29. 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. Upon breach of the warranty, 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. 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.

30. System Failure or Damage

In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

31. Title of Product

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. Transfer of title to the Product shall 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 shall be at no additional

cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

32. Waiver of Breach

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. 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 shall 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, Participating Addendum, or Purchase Order.

33. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity 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 to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

34. 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 this transaction (contract) 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.

35. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall 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 shall be governed by the law of the state serving as Lead State (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. 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 Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall 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 shall be in the Purchasing Entity's State.

c. 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; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

36. NASPO ValuePoint eMarket Center

In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

37. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this master agreement.