



**PROCUREMENT OF ACQUISITION  
SUPPORT SERVICES (PASS)**  
Led by the State of Hawaii

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Master Agreement #: 19-19-03

Contractor: **BERRY DUNN MCNEIL & PARKER, LLC**

Participating Entity: **STATE OF NORTH CAROLINA**

This Addendum will add the State of North Carolina as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number 19-19-03 with BERRY DUNN MCNEIL & PARKER, LLC.

**Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the *Procurement of Acquisition Support Services (PASS)* led by the State of Hawaii for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of North Carolina. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Charles K. Leadbetter
Address:	100 Middle Street, Portland, ME 04101
Telephone:	(207) 541-2249
Email:	<a href="mailto:cleadbetter@berrydunn.com">cleadbetter@berrydunn.com</a>

Participating Entity

Name:	Grant F. Braley
Address:	1305 Mail Service Center, Raleigh NC 27699-1305
Telephone:	(919) 807-4519
Fax:	(919) 807-4510
Email:	<a href="mailto:grant.braley@doa.nc.gov">grant.braley@doa.nc.gov</a>

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**4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER  
AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

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

**NORTH CAROLINA TERMS AND CONDITIONS**  
**MANDATORY FOR PARTICIPATION AGREEMENTS**

- a. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the State of North Carolina or any of its sub-units in or as part of any commercial advertising or marketing of products or services.
- b. **GOVERNING LAWS:** Solely with respect to matters or disputes related to or arising from purchase orders issued hereunder by governmental entities within the State of North Carolina, this agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. This is a cooperative purchasing agreement advantageous to the State under 01 NCAC 05B.1513 and has been determined eligible for a Waiver of Competition under 01 NCAC 05B.1401. As to State purchases under the Agreement, it is subject to the provisions of Chapter 143 of the N.C. General Statutes and the rules in 01 NCAC Chapter 05.
- c. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records, solely to the extent they relate to transactions and matters involving North Carolina's participation in the Contract, to verify accounts and data affecting fees or performance under the Contract, as provided in G. S. §143-49(9).
- d. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
- e. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and

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local agencies having jurisdiction and/or authority.

- f. **CERTIFICATIONS:** Vendor certifies to each of the following:
- a). that this bid is submitted competitively and without collusion, as required by G.S. 143-54;
  - b). that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);
  - c). that it is not an ineligible vendor as set forth in G.S. 143-59.1;
  - d). that no employee or agent of Vendor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and
  - e). that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, as required by G.S. §143-48.5.
  - f). that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer's Divestment List may be reviewed at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.asp>.
- g. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
- h. **ELECTRONIC PROCUREMENT:**
- (a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
  - (b) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to

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the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

(c) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to G.S. 147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Vendor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

(d) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, Bids received, evaluation of Bids received, award of contract, and the payment for goods delivered.

(e) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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**VENDOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ANY SUB-CONTRACTOR OR DEALER INVOLVED IN PERFORMANCE UNDER THIS CONTRACT IN THE EVENT THAT SUCH SUB-CONTRACTOR OR DEALER DEFAULTS ON PAYMENT.**

i. **INSURANCE:**

**COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.

b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

**REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

j. **TERMINATION FOR CONVENIENCE:** The State may terminate this contract at any time by providing ninety (90) days' notice in writing from the State to the Vendor and to the Lead State. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for goods and services satisfactorily completed and delivered by the Vendor, less any

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payment or compensation previously made.

- k. **PROHIBITED ACTIONS:** Notwithstanding any provision to the contrary, the State expressly does not agree to any Vendor term or provision in any attached or referenced document, or any revision thereof, that is inconsistent with or materially changes any posted State requirement, term or condition in a relevant solicitation, except as 1) *expressly and lawfully agreed to in writing by authorized official(s)* prior to award of the contract, or, 2) ordered by a court of competent jurisdiction. For avoidance of doubt, the above statement includes and means, without limitation and supplementing any similar provisions in the Master Agreement, any vendor term or provision that provides for:
- indemnification of any person or entity by the State,
  - applicability of state laws other than of North Carolina and of venue in Wake County, North Carolina, G.S. 22B-3 *Contracts against public policy* (Contracts with forum selection provisions deemed void and unenforceable); See, G.S. 114-6,
  - arbitration, mediation or any limitation of any right of the State to jury trial, See G.S. 22B-10 (Contract provisions waiving jury trial unenforceable),
  - delivery other than FOB Destination,
  - passage of title or risk of loss to the State prior to express acceptance of deliverables by the State,
  - pre-payment of maintenance fees for a term other than one year,
  - state contracts that have a term of more than 3 years without approval by the State Purchasing Officer (SPO).
  - a late payment fee, penalty, or interest, or attorney's fees,
  - any obligation by the State to pay taxes inconsistent with its tax exempt status,
  - any change in the posted payment terms,
  - limitation of the right of the State to contract termination upon failure of legislative appropriation,
  - a statement of "entire agreement" in a subservient Vendor document,
  - assignment of a State contract without approval by the State, 01 NCAC 05B.1507,
  - implementation of any oral promise(s) or statements made by any State official or personnel, 05 NCAC 05B.0102
  - Vendor intellectual property liability or general indemnity clauses that are not unlimited as to dollar amount,
  - any obligation to expose State Personally Identifiable Information or State Data internationally,
  - *a general limitation of liability by the Vendor that is less than 2 times the total value of the Vendor's contract.*
- l. **NOTE:** A contract not made in accordance with Article 3 of G.S. 143 is void. G.S. 143-58. The insurance provided for in the Master Agreement is coverage available to the State of North Carolina and its Purchasing Entities.



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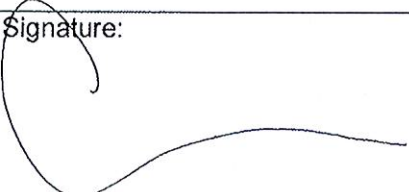
5. Lease Agreements: **Reserved**
6. Subcontractors: All contactors, dealers, and resellers authorized in the State of North Carolina, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.



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

<b>Participating Entity:</b> STATE OF NORTH CAROLINA	<b>Contractor:</b> BERRY DUNN MCNEIL & PARKER, LLC
Signature: 	Signature: 
Name: Grant F. Braley	Name: Charles K. Leadbetter
Title: State Procurement Mgr	Title: Principal
Date: March 3, 2020	Date: 3-3-2020

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Jeff Holden
Telephone:	605-220-5160
Email:	jholden@naspovaluepoint.org

***[Please email fully executed PDF copy of this document to***  
***PA@naspovaluepoint.org***  
***to support documentation of participation and posting in appropriate data bases.]***