



Department of Buildings and General Services  
Office of Purchasing & Contracting  
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<http://bgs.vermont.gov/purchasing>

*Agency of Administration*

# SEALED BID REQUEST FOR PROPOSAL EQUIPMENT RENTAL SERVICE

Solicitation #PCA 19-01

ISSUE DATE: April 23, 2019  
BIDDERS' CONFERENCE: April 30, 2019 @ 2:00PM ET  
QUESTIONS DUE BY: May 20, 2019 @ 3:00PM ET  
RFP RESPONSES DUE BY: June 6, 2019 @ 3:30PM ET

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:

<https://bgs.vermont.gov/purchasing/bids>

THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THIS RFP.

THE STATE OF VERMONT OFFICE OF PURCHASING & CONTRACTING IS THE LEAD STATE AND ISSUING OFFICE FOR THIS DOCUMENT AND ALL SUBSEQUENT ADDENDA RELATING TO IT. THE REFERENCE NUMBER FOR THE TRANSACTION IS SOLICITATION # PCA 19-01. THIS NUMBER MUST BE REFERRED TO ON ALL PROPOSALS, CORRESPONDENCE, AND DOCUMENTATION RELATING TO THE RFP.

THE LEAD STATE POINT OF CONTACT DESIGNATED BY NASPO VALUEPOINT AND THE STATE OF VERMONT, OFFICE OF PURCHASING & CONTRACTING IS:

STATE CONTACT: BRIAN BERINI, COMMODITIES PROCUREMENT ADMINISTRATOR  
E-MAIL: [brian.berini@vermont.gov](mailto:brian.berini@vermont.gov)  
FAX: (802) 828-2222

## 1. OVERVIEW:

- 1.1. Through this Request for Proposal (RFP) the Department of Buildings and General Services (hereinafter the "State") is seeking to establish contracts with one (1) or more companies that can provide **EQUIPMENT RENTAL SERVICE** to various state agencies, political subdivisions within Vermont, and any NASPO ValuePoint Participating Entities.

The State of Vermont, Office of Purchasing & Contracting (Lead State), is requesting Proposals for Equipment Rental Services. The purpose of this Request for Proposals (RFP) is to establish Master Agreements ("Master Agreements") with qualified Bidders to provide Equipment Rental Services as listed in this RFP for all Participating States. The following categories of equipment are a partial representation of types of rental equipment desired:

- a. Arrow & Messaging Boards
- b. Earthmoving Equipment
- c. Forklifts & Material Handling
- d. Lawn & Landscape
- e. Scaffolding
- f. Generators
- g. Air Compressors

**Note.** Refer to Price Schedule, Tabs B-D, for complete list of equipment.

The objective of this RFP is to obtain best value, and in at least most cases, achieve more favorable pricing than are obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this solicitation may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions (each a "Participating Entity"). The initial term of the Master Agreement shall be two (2) years with three (3) 12-month renewal provisions.

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

This will be a new Master Agreement for the Lead State and NASPO ValuePoint.

Bidders must be an established equipment rental company (minimum of five years) with branch locations (locations owned and franchised locations) for equipment rental on a Regional and/or Nationwide basis.

Bidders may submit for a national or regional award. Bidders submitting for a national award must have locations in at least 17 of the 19 regions indicated on Attachment 20.5. Regional bidders must indicate which regions and have at least 10 locations in the regions they are proposing for. Proposals for regional awards will be evaluated independent of each other.

## 1.2. DEFINITIONS:

The following definitions apply to this solicitation. The NASPO ValuePoint Master Agreement terms and conditions (Attachment 20.4) and the Lead State terms and conditions (Attachment 20.2.) also contain definitions of terms used in this solicitation.

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

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

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

**"Request for Proposal" or "RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

### **1.3. NASPO ValuePoint Background Information**

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

### **1.4. Participating Entities**

In addition to the Lead State conducting this solicitation, the following Participating Entities have requested to be named in this RFP as potential users of the resulting Master Agreement: Hawaii; Maryland; Montana; Rhode Island; and So. Dakota. Other entities may become Participating Entities after award of the Master Agreement. Some entities may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to bidders to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other entities terms and conditions. The Participating Entities shall negotiate these terms and conditions directly with the contractor. State specific terms and conditions are included in Attachment 20-11.

#### **1.4.1. Anticipated Usage**

This is a new Master Agreement for the Lead State and NASPO ValuePoint. Therefore, annual usage data is not available. No minimum or maximum level of sales volume is guaranteed or implied in awarded agreements made under this RFP.

#### **1.4.2. State of Vermont Master Agreement Statement of Compliance**

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

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard terms and conditions in Attachment 20.4. and Lead State specific terms and conditions required to execute a master agreement, the scope of work (Attachment 20.1) and selected portions of the Bidder's Proposal.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement terms and conditions, although Bidder will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment 20.4. Bidder shall include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment 20.4).

#### **1.4.3. Insurance**

To be eligible for award, the Bidder agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement terms and conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Attachment 20.4 Section 21.

#### **1.4.4. NASPO ValuePoint Administrative Fee and Reporting Requirements**

To be eligible for award, the Bidder agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement terms and conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of the NASPO ValuePoint Master Agreement terms and conditions.

Bidders shall include in their proposals a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include but not be limited to the following components:

- a. Bidders shall identify the method and frequency in which usage data will be collected from authorized distributors.
- b. Bidders shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating Entities.
- c. Bidders shall identify the method in which up-to-date information will be provided to NASPO ValuePoint, Lead State Contract Administrator, and Participating Entities.
- d. Bidder shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the contract period. The following information, at a minimum is required: name, mailing address, telephone number, fax number, and email address.

#### **1.4.5. Adherence to the NASPO ValuePoint Master Agreement**

The NASPO ValuePoint Master Agreement terms and conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. In this regard,

- a. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan to actively encourage sales under the agreement?
- b. Public Entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of enabling agreements of this nature, how would you clarify any questions regarding the scope of the agreement with respect to any potential order?
- c. Does your company participate in other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on your company for participating within this agreement.

#### **1.4.6. Lead State Terms and Conditions**

Refer to Attachment 20.2. for the Lead State Special terms and conditions that apply to this solicitation. Bidder shall provide a letter of understanding and acceptance to all the terms and conditions from the Lead State. The letter must be signed by the individual submitting the Proposal or an authorized representative of the Bidder's company.

#### **1.4.7. Participating Entities Terms and Conditions**

For informational purposes only, some Participating Entities specific terms and conditions are provided in Attachment 20-12 to this solicitation and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendums. Bidder shall provide a Cover letter of understanding they may be required to negotiate additional terms and conditions from Participating Entities when executing a Participating

Addendum. The letter must be signed by the individual submitting the Proposal or an authorized representative of the Bidder's company.

- 1.5. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the Lead State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual concerning this RFP is strictly prohibited and may result in disqualification.
- 1.6. **BIDDERS' CONFERENCE:** A non-mandatory pre-bid conference will be held as specified on the front page of this RFP. This will be your opportunity to ask questions with the Lead State. All parties interested will be invited to participate via Conference Bridge number 844-890-7777, pass code 468-415#. Any oral answers given by the State during the pre-bid conference will be documented and formal responses will be provided. Participation is at the participant's own expense.
- 1.7. **QUESTION AND ANSWER PERIOD:** Any vendor requiring clarification of any section of this RFP or wishing to comment on any requirement of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Questions or comments not raised in writing on or before the last day of the question period are thereafter waived. At the close of the question period a copy of all questions or comments and the Lead State's responses will be posted on the Lead State's web site at <https://bgs.vermont.gov/purchasing/bids>. Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions. The identity of potential Bidders will not be published with the answers, but the text of questions will be restated, so Bidders are cautioned about including context in questions that may reveal the source of questions.
2. **DETAILED REQUIREMENTS:** The Lead State is seeking to establish Master Agreements, with one (1) or more companies that can provide Rental Equipment to various state agencies, political subdivisions within Vermont, and any NASPO ValuePoint Participating States.
  - 2.1. Bidders shall propose a pricing structure based on the daily, weekly, and monthly rental rate of the rental of the equipment offered.
  - 2.2. The monthly rental rate shall be based on a calendar month.
  - 2.3. The weekly rental rate, per item, shall be based on a 5-day, 8-hour day.
  - 2.4. The daily rental rate shall be based on an 8-hour day.
  - 2.5. Bidders shall indicate what their maximum allowable hours are for any category of equipment offered, as well as, provisions for recovering depreciation costs for excess hours.
  - 2.6. In the event a daily rental becomes a weekly rental, or a weekly rental becomes a monthly rental, the rental shall be rated as the extension occurs, i.e. the rental is for 3 days, yet the equipment is kept for a week, at the end of the week, the records are changed to reflect the weekly rental rate, so that the rental rate is always the exact rate of rental. If a rental, by the day or weekly, exceeds the 8-hour per day period, the daily rental rate divided by 8 will get the hourly rental rate to be added.
  - 2.7. Rental rates shall be pro-rated based on the actual rental commencement date.
  - 2.8. For equipment picked up at a rental facility, rental starts when equipment leaves yard and ends when the equipment is returned to rental facility.
  - 2.9. For equipment being delivered to a job location, the rental period begins at the time of delivery and ends when the Purchasing Entity provides a date when the Contractor shall pick up the equipment. The Purchasing Entity must provide a minimum of twenty-four (24) hour notification to the Contractor, allowing adequate time for the Contractor to coordinate pick-up. Failure to pick up the equipment, with proper notification, shall not result in an additional charge to the Purchasing Entity, nor holds the Purchasing Entity responsible for any damages that may occur.
  - 2.10. Rental rates do not accrue during equipment downtime.

- 2.11. Contractors shall be responsible for any repairs relating to the equipment except those proven to be caused by the Purchasing Entity.
- 2.12. Contractors shall accept all financial responsibility of the rental of the equipment to be rented and shall not obligate an additional signing of any supplemental agreement with the manufacturer of the equipment or any financial institution.
- 2.13. All equipment must be in good working order and clean condition when picked up or delivered. If the equipment is not what the Purchasing Entity requested, or not mechanically and/or cosmetically sound, the Purchasing Entity has the right to refuse the equipment at the time of delivery or pick-up and shall document the reason in detail at the time of refusal. The documentation of the refusal is to be copied to the Purchasing Entity and the Contractor. Any charges incurred due to the rejected delivery will be the full responsibility of the Contractor.
- 2.14. Equipment shall come fully fueled and lubricated and be ready for use at the time of pick-up or delivery. The Purchasing Entity will be responsible for fueling and maintaining the equipment during the rental period and prior to pick-up or delivery back to the bidder. The Purchasing Entity is responsible for providing the equipment back to the Contractor in as same as condition when received, at the end of the rental period.
- 2.15. Contractor shall replace any parts, in the event of mechanical failure. The Purchasing Entity will immediately notify the Contractor of the mechanical failure, and the Contractor shall respond within two (2) hours to the rental location. The Contractor must notify the Purchasing Entity with a timeframe in which the equipment will be fixed. If downtime will be four (4) or more hours, the Contractor shall provide a replacement piece of equipment, that is equal to or better than what is rented, for the remainder of the rental period or until the original equipment is repaired and returned. If a replacement equipment is provided, the Contractor shall not invoice the Purchasing Entity at a different rental price than what is already established.
- 2.16. Prices must remain firm for the first year of the contract period. After the first year of the contract period, and every renewal period thereafter, the Contractor may request a price adjustment consistent with and relative to price changes originating with the manufacturer and/or the market trends. The new pricing methodology must be sent with the request for adjustment to the Lead State. Requests for such an adjustment must be fully documented and, if approved, shall be firm until the next annual anniversary date of the contract. The State reserves the right to reject any requested price adjustments if deemed excessive.
- 2.17. To request a price adjustment, Contractor must submit a request within thirty (30) days of the annual anniversary date of the contract. If approved, price adjustments shall become effective ten (10) days after the approval. Retroactive adjustments shall not be allowed. Any purchase orders issued by any Purchasing Entity, prior to the effective date will be honored by Contractor at the price in effect at the time of the issuance of the purchase order.
- 2.18. Bidders shall submit a list with their Proposal, of all locations they are able to provide rental equipment as outlined in the Price Schedules.
- 2.19. Allowable charges will be the cost of any permits necessitated by product dimension or excess weight. (i.e. transportation pricing)
- 2.20. Terms the bidders provided as part of the rental terms are:
  - a. Rental rates are not subject to availability
  - b. Rental rates shall remain firm and are not subject to change due to job conditions.
  - c. No additional charges may apply for setup and training

d. Bidder will describe what is included in their proposed Rental rates; i.e., wear items, screen cloth, belt damage, periodic maintenance, etc.

2.21. All equipment must be delivered with a Pre-Delivery Inspection (PDI) check list indicating that all pre-delivery checks have been performed; that all equipment, gauges, etc., are in operational order and ready for immediate use by the Purchasing Entity. The Contractor must perform their own PDI per the manufacturer’s instructions, or to subcontract the PDI. Contractor must also ensure, prior to delivery that all fluids at maximum levels, tire pressures to be at factory recommended levels, lights and switches in working order, etc. Any equipment delivered without the PDI checklist will not be accepted.

**2.22. EXPECTATIONS FOR RENTAL EQUIPMENT BEING PROPOSED**

2.22.1. **Industry Standards:** Except as contained herein, the specifications for this RFP shall be those set forth by the rental equipment for construction and related maintenance or facility operations as understood and accepted within the industry across the nation.

2.22.2. **Deviations from industry standards:** Bidders offering an “equal”, for any equipment, **must include** documentation which demonstrates, to the Lead State’s satisfaction, that the offered equipment(s) meets the requirement of the RFP. Failure to provide satisfactory documentation of any “equal” equipment does not excuse the Bidder from providing the equipment that meets the specification. Further, failure to provide satisfactory documentation may eliminate the Bidder from further consideration.

2.22.3. **Compliance with laws and standards:** All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes, to include Federal, State, local, DOT, etc.

2.22.4. **Delivered and operational:** Products/equipment offered herein are to be proposed based upon being delivered and operational at the Rental Zone (see Price Response Region Map attachment 20.5)

2.22.5. **Warranty:** The Bidder warrants all products/equipment and related services furnished hereunder will be free from defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards.

**3. Schedule of Events:** All times are Eastern Standard times.

<b>Activity</b>	<b>Due Date</b>
RFP Availability to Bidders	04/23/2019
Pre-bid Conference	04/30/2019 Time: 2:00PM
Written Questions Due No Later Than (NLT)	05/20/2019 Time: 3:00PM
Proposals Due NLT	06/06/2019 Time: 3:30PM
Public Proposal Opening	06/07/2019 Time: 3:30PM
Bidder Best & Final Discussions, as required	TBD
Contract Award	TBD

**4. Governing Laws and Regulations**

- This procurement is conducted by the Lead State, in accordance with the Lead State Statutes. These are available at . <https://legislature.vermont.gov/statutes/>
- This procurement (i.e. the award of the Master Agreement) shall be governed by the laws of the Lead State. Venue for any judicial action relating to this procurement, evaluation, and award shall be in the Vermont Superior Court, Civil Division, Washington Unit.

**5. Right to Publish**

Throughout the duration of this procurement process, Bidders must secure from the Lead State Contract Administrator prior approval for the release of any information that pertains to the potential work or activities covered by this RFP. Bidder shall not make any representations of NASPO ValuePoint opinion or position as to the quality or effectiveness of the services that are the subject of this RFP without prior written consent. Failure to adhere to these requirements may result in disqualification of the Bidder’s proposal.

**6. RFP Addenda**

The Lead State may, in its discretion, change the date and/or time of proposal openings or issue an addendum. If a change is made, the Lead State will make a reasonable effort to inform all bidders by posting at: <https://bgs.vermont.gov/purchasing/bids>.

**7. Solicitation Requirements, Information and Instructions to Bidders**

**7.1. Firm Offers**

Responses to this RFP, including proposed costs, will be considered firm for 180 days after the proposal due date.

**7.2. Proposal Content and Format Requirements**

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Scope of Work elements.

**8. Confidential or Proprietary Information**

The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 VSA, Chapter 5, the bidder shall clearly designate the material as a separate exhibit, providing explanation why it believes the material is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

**9. Debarment and Other Certifications**

Bidders must, by written statement in its response, certify that neither the Bidder nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency.

**10. METHOD OF AWARD:** Awards will be made in the best interest of the State and will be made to the two highest responsive Bidders for each region. The State reserves the right to combine regional awards where the same Bidder(s) scored highest in those regions. The State reserves the right to make additional awards to other compliant Bidders at any time if such award is deemed to be in the best interest of the Lead State under the provisions of 29 V.S.A. § 903. (<http://legislature.vermont.gov/statutes/section/29/049/00903>).

**11. Evaluation and Award**

Consideration will be given on a weighted basis as depicted below.

EVALUATION CRITERIA	POINTS
Background, experience, years in business, including qualifications of personnel servicing account. (see 18.1)	250
Reference checks (see 17.2)	100

Customer Service	250
Technology	100
Bidder's locations and applicable service capabilities (number of Map Regions supported).	200
Pricing Proposal	400
TOTAL SCORE	1,300

**12. Right to Waive Minor Irregularities**

The Lead State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Bidders may be asked to give a verbal presentation of their Proposal after submission. Failure of Bidders to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

**13. Post Award Formalization of the Contract**

The Lead State reserves the right, during contract negotiation of the Master Agreement, to adjust terms and conditions that would not (in the Lead State's judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating Entities, with materiality defined in terms of the effect on the evaluation and award. In any event, the Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Bidders or make no award under this RFP. Moreover, the Lead State reserves the right to reconsider any proposal submitted at any phase of the procurement. It also reserves the right to meet Bidders to gather additional information, so long as all Bidders are extended an equal opportunity for discussions and proposal revisions.

**14. Term of Master Agreement**

Section 3 of the NASPO ValuePoint Master terms and conditions (Attachment 20.4.) specifies the initial term and renewal provisions for the Master Agreements resulting from this Solicitation.

**15. Cancellation of Procurement**

This RFP may be canceled at any time up until the time of award of the Master Agreement(s) if the Lead State determines such action to be in the Lead State's best interests.

**16. GENERAL REQUIREMENTS:**

- 16.1. **PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the Lead State to consider must be submitted for consideration. All equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored. All equipment shall be delivered assembled, serviced, and ready for immediate use, unless otherwise requested by the Lead State.
  - 16.1.1. Prices and/or rates shall remain firm for the initial term of the contract. The pricing policy submitted by Bidder must (i) be clearly structured, accountable, and auditable and (ii) cover the full spectrum of materials and/or services required.
  - 16.1.2. Cooperative Agreements. Bidders that have been awarded similar contracts through a competitive bidding process with another state and/or cooperative are welcome to submit the pricing in response to this solicitation, however, pricing submitted must be in accordance with the attached Price Schedule.

16.2. **BEST AND FINAL OFFER:**

16.2.1. **Best and Final Offer (BAFO).** At any time after submission of responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the Lead State may invite Bidder(s) to provide a BAFO.

16.2.1.1. The Lead State reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

16.2.2. **Evaluation of Responses and Selection of Bidder(s).** The Lead State shall have the authority to evaluate responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

16.3. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

16.3.1. **Self Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

16.3.2. **Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the Lead State shall be provided with a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

16.4. **EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

16.5. **STATEMENT OF RIGHTS:** The Lead State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Bidders may be asked to give a verbal presentation of their proposal after submission. Failure of bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal. To secure a project that is deemed to be in the best interest of the Lead State, the Lead State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions.

16.6. **CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the Lead State, including the Standard Contract Form and Attachment 20.1 as attached to this RFP for reference.

The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

16.6.1. **PAYMENT TERMS:** All invoices are to be rendered by the Contractor on the bidder's standard billhead and forwarded directly to the institution or Purchasing Entity ordering materials or services and shall specify the address to which payments will be sent. Payment terms are Net 30 days from receipt of an error-free invoice with all applicable supporting documentation. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

17. **CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for Lead State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the Lead State's consideration. Proposer shall submit its Proposal without extensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposal.

**17.1. COVER LETTER:**

17.1.1. Confidentiality. To the extent your proposal contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

17.1.2. The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures.

17.1.3. Exceptions to Contract Terms and Conditions. If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the Lead State contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the Lead State reserves the right to cancel the negotiation if deemed to be in the best interests of the Lead State.

17.2. **REFERENCES.** Provide a minimum of three (3) references from companies or agencies that you have performed services for with similar scope and size and within the last three (3) years (the Lead State shall not be used as a reference). Reference Sheet, (Attachment 20.8) shall be returned to the RFP Lead State prior to proposal opening date. The average rating of six (6) or greater shall be required in order to be considered for an award for this RFP. Failure to provide at least three (3) references shall result in your proposal being found non-responsive. In the event the RFP Lead receives more than three (3) references, the totals for all the references will be added and averaged for a total score.

**18. Experience and Capability**

Bidders must identify in their response how their company meets (or exceeds) all requirements listed in Section 2 of this RFP solicitation. Additionally, provide the following information specific to your company:

### 18.1. Bidder Profile

1. Your company's full name
2. Primary business address
3. Describe your company ownership structure
4. Employee size (number of employees)
5. Website
6. Sales contact information
7. Your client retention rate during the past 3 years
8. A brief history of your company and the year it was founded
9. Describe your company's growth during the past three years.
10. List all regions and areas serviced based on the map in Attachment 20.5.
11. Bidders must submit a list of all of their locations with addresses and hours of operations and region they are located in.
12. Service Schedules and Maintenance Plans

### 18.2. Customer Service

1. What are your hours of operation and when are key account people available to us?
2. Describe how problem identification and resolution will be handled.
3. How will you service our account? Describe the system you will use to manage our account.
4. How do you respond to customer complaints and service issues?
5. How do you assess customer satisfaction?
6. What are your quality assurance measures and how are they handled in your organization.
7. Bidder to provide their Standard Response Times for Emergency and Routine Responses.

### 18.3. Technology

1. Describe how Purchasing Entities would place orders and receive confirmation of order receipt? Include all methods of order submission (i.e. phone, fax, online ordering, email, etc.).
2. Describe your ability and process to support a decentralized system of orders submitted from many end users in multiple states and locations.

18.4. If a Bidder intends to use subcontractors, the Bidder must identify in the proposal the names of the subcontractors, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s).

18.5. **REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

18.6. **PRICING:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP. Price Schedule must be submitted to the Lead State as a separate document in Bidders Proposal. **An Excel version of the Pricing Schedule must be submitted with your Proposal.** A copy of this Price Schedule (in Excel) can be found on the Lead State website

<https://bgs.vermont.gov/purchasing/bids>. This electronic file MUST be used in your Proposal. Do **NOT** alter the format or sequencing of the data in any form or fashion.

- 18.7. **EQUIPMENT DELIVERY REQUIREMENTS:** Bidders **must** provide pricing based on FOB Destination for the supported Rental Zone(s) as indicated on the attached map (Attachment 20.5). Bidders shall also state the billing terms for deliveries (lump sum per piece of equipment, per mile, after hour charges, etc.)
- 18.8. **NUMBER OF COPIES:** Submit one (1) original bid and one (1) redacted copy with your Proposal in Adobe Acrobat. A copy of your Price Schedule, on the State approved **Excel File**, must accompany your Proposal.
- 18.9. **CERTIFICATE OF COMPLIANCE:** The Certificate of Compliance form must be completed and submitted as part of the response for the proposal to be considered valid. See attachment 20.3.

## 19. SUBMISSION INSTRUCTIONS:

- 19.1. **CLOSING DATE:** Bids must be received by the due date and at the location specified on the front page of this RFP.
- 19.2. The Bid opening will be held at **109 State Street, Third Floor, Montpelier, VT** and is open to the public.
- 19.3. **SECURITY PROCEDURES:** Please be advised extra time will be needed when visiting and/or delivering information to 109 State Street. All individuals visiting 109 State Street must present a valid government issued photo ID when entering the facility.
- 19.4. **SEALED BID INSTRUCTIONS:** All bids must be sealed and must be addressed to the State of Vermont, Office of Purchasing & Contracting, **109 State Street – Third Floor, Montpelier, VT 05609-3001**. BID ENVELOPES MUST BE CLEARLY MARKED 'SEALED BID' AND SHOW THE REQUISITION NUMBER AND/OR PROPOSAL TITLE, OPENING DATE AND NAME OF BIDDER.
  - 19.4.1. All bidders are hereby notified that sealed bids must be received and time stamped by the Office of Purchasing & Contracting located at **109 State Street – Third Floor, Montpelier, VT 05609-3001** - by the time of the bid opening. Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will be returned to the bidder, and will not be considered. **Any delay deemed caused by Security Procedures or courier/mail delivery service will be at the bidder's own risk.**
  - 19.4.2. Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: <https://bgs.vermont.gov/purchasing/bids>.
  - 19.4.3. All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid and read the name and address of the bidder. Bid openings are open to members of the public. Bid results are a public record, however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.
- 19.5. **DELIVERY METHODS:**
  - 19.5.1. **SECURITY PROCEDURES:** Note that security procedures concerning delivery of any mail or parcels to 109 State Street may delay receipt of mail/parcel pieces by one business day.
  - 19.5.2. **U.S. MAIL:** Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by the Office of Purchasing & Contracting prior to the time of the bid opening.

**19.5.3. EXPRESS DELIVERY:** If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped by the Office of Purchasing & Contracting. **Due to security procedures express deliveries must be received by 10:30 AM in order to be received by the Office of Purchasing & Contracting that same day.**

19.5.4. **HAND DELIVERY:** Hand carried bids shall be delivered to a representative of the Office of Purchasing & Contracting prior to the bid opening.

19.5.5. **ELECTRONIC:** Electronic bids will be accepted via email submission to [SOV.ThePathForward@vermont.gov](mailto:SOV.ThePathForward@vermont.gov). The email submission must reference the procurement name "**Equipment Rental Service**".

- Bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted.
- There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.

19.5.6. **FAX BIDS:** Faxed bids will not be accepted.

## 20. ATTACHMENTS:

- 20.1. SAMPLE Standard State Contract Form
- 20.2. Vermont Standard State Contract Provisions (December 15, 2017)
- 20.3. Certificate of Compliance, Worker Classification Compliance Requirement; Subcontractor Reporting Form
- 20.4. NASPO ValuePoint Terms and Conditions and Required Forms
- 20.5. Price Response Region Map
- 20.6. Price Schedule (Excel File)
  - 20.6.1. Tab-A Equipment Rental Zones
  - 20.6.2. Tab-B Price Sheet Schedule Zones 1-6
  - 20.6.3. Tab-C Price Sheet Schedule Zones 7-12
  - 20.6.4. Tab-D Price Sheet Schedule Zones 13-19
  - 20.6.5. Tab-E Additional Offerings
- 20.7. Reference Questionnaire
- 20.8. References
- 20.9. Detailed Sales Report Template & Key
- 20.10. Proposal Checklist
- 20.11. State Specific Terms and Conditions
  - 20.11.1. Maryland
  - 20.11.2. Montana
  - 20.11.3. Rhode Island

**Attachment 20.1**

**SAMPLE**

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES

Contract # \_\_\_\_\_

1. **Parties.** This is a contract for services between the State of Vermont, \_\_\_\_\_ (hereinafter called "State"), and \_\_\_\_\_, with a principal place of business in \_\_\_\_\_, (hereinafter called "Contractor"). Contractor's form of business organization is \_\_\_\_\_. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of \_\_\_\_\_. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$\_\_\_\_\_.00.

4. **Contract Term.** The period of contractor's performance shall begin on \_\_\_\_\_, 20\_\_ and end on \_\_\_\_\_, 20\_\_.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of \_\_\_ pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment D - Other Provisions (if any)

Additional attachments may be lettered as necessary

9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

(1) Standard Contract

(2) Attachment C (Standard Contract Provisions for Contracts and Grants)

(3) Attachment D (if applicable)

(4) Attachment A

(5) Attachment B

List other attachments, if any, in order of precedence

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES Contract # \_\_\_\_\_

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

By the Contractor:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SAMPLE**

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES Contract # \_\_\_\_\_

**STATEMENT OF WORK**

The Contractor shall: \_\_\_\_\_

Elements of the SOW will be compromised from the requirements outlined in Section-2 Detailed Requirements.

**SAMPLE**

STATE OF VERMONT STANDARD CONTRACT FOR SERVICES Contract # \_\_\_\_\_

**ATTACHMENT B – PAYMENT PROVISIONS**

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
  - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
  - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: \_\_\_\_\_
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: \_\_\_\_\_

## Attachment 20.2

### VERMONT STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS REVISED DECEMBER 15, 2017

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control

Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- C. **Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

### **32. Requirements Pertaining Only to State-Funded Grants:**

- A. **Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. **Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

**Attachment 20.3.**

**RFP: EQUIPMENT RENTAL SERVICE**

**DATE:**

Page 1 of 3

**CERTIFICATE OF COMPLIANCE**

**For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.**

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
  
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.
  
- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?  
  
    \_\_\_ Yes \_\_\_ No
  
- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

**Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

**Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

**Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):**

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- Energy Star® Certification
- LEED®, Green Globes®, or Living Buildings Challenge<sup>SM</sup> Certification
- Other internationally recognized building certification:

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2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

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3. Please Check all that apply:

- Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
- Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
- Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
- Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? \_\_\_\_\_
- Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
- Bidder offers employees an option for a fossil fuel divestment retirement account.
- Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

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4. Please list any additional practices that promote clean energy and take action to address climate change:

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**F. TOWNS AND SCHOOLS:** Provisions for the purchase of supplies, materials, and equipment for Towns, Schools, Political Subdivisions, and Independent Colleges of the State of Vermont.

- 1. Bidder agrees to furnish the products identified in this response to the political subdivisions of the State of Vermont at the same prices, terms and conditions as are quoted in this response? Yes \_\_\_\_\_  
No \_\_\_\_\_

If no, kindly outline below the prices, terms, and conditions under which Bidder will agree to supply these needs to the political subdivisions of the State of Vermont.

\_\_\_\_\_

- 2. Bidder agrees to furnish the products identified in this response to the independent colleges of the State of Vermont at the same prices, terms and conditions as are quoted in this response? Yes \_\_\_\_\_  
No \_\_\_\_\_

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs to the independent colleges of the State of Vermont.

\_\_\_\_\_

It should be noted that if Bidder agrees to extend the State's contract terms and prices to the political subdivisions or to independent colleges, all such items furnished will be billed directly to and paid for by the political subdivision or college and neither the State of Vermont, nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility.

**G. Acknowledge receipt of the following Addenda:**

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Bidder Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_

\_\_\_\_\_ Telephone: \_\_\_\_\_

\_\_\_\_\_ E-Mail: \_\_\_\_\_

By: \_\_\_\_\_ Name: \_\_\_\_\_

Signature of Bidder (or Representative)

(Type or Print)

**END OF CERTIFICATE OF COMPLIANCE**



## 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") and, in the case of Orders by the State of Vermont, Attachment 20.2;
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Detailed Requirements in Section 2 of the RFP;
- (5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (6) 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** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

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

**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 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, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**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 Proposal is not required to participate through execution of a Participating Addendum.

**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 (as well as the District of Columbia and U.S territories), 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, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## **NASPO ValuePoint Program Provisions**

### **3. Term of the Master Agreement**

a. The initial term of this Master Agreement is for One (1) year. This Master Agreement may be extended beyond the original contract period for Three (3) additional 12-month at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

#### **4. Amendments**

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

#### **5. Participants and Scope**

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The 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. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are 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](mailto: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. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

- a. **Resale.** “Resale” means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor’s proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables).

## 6. 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.  
<http://calculator.naspovaluepoint.org>

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 6a 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.

## 7. 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 shown in Attachment 22.11.

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.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if bidder fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

- a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER 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.

b. 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. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. 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.

## **10. Right to Publish**

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

## **11. 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 is governed by sections 2.16 and 2.17 of the RFP. No retroactive adjustments to prices or rates will be allowed.

## **12. Individual Customers**

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

## **Administration of Orders**

### **13. 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. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

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 under 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;
- (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, cancellation 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, cancellation 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.

## **14. Delivery**

Delivery requirements are specified in section 20.5 of the RFP.

## **15. Laws and Regulations**

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

## **16. Inspection and Acceptance**

- a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.
- d. The warranty period shall begin upon Acceptance.

## **17. Payment**

Payment after Acceptance 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, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **18. [RESERVED]**

## **19. [RESERVED]**

## **20. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it (“Pre-existing Intellectual Property”). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

## **General Provisions**

### **21. 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 A.M. Best’s Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement’s termination or, at a Participating Entity’s option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), contractual liability, 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. Contractor shall provide notice to a Participating Entity who is a state within thirty (30) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

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 written notice of cancellation shall be delivered in accordance with the policy provisions, 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, other state Participating Entities’ rights and Contractor’s obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

## **22. Records Administration and Audit**

a. The Contractor shall maintain all records 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. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. 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, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

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.

## **23. 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.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section

23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

## **24. Public Information**

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

## **25. 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 and other third parties.

## **26. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement 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.

## **27. 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.

## **28. Cancellation**

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

## **29. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are 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.

## **30. 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 shall have all of the rights and remedies under this paragraph

regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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.

### **31. 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.

### **32. 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.

### **33. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from 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), Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(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.

### **34. 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 Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

### **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. 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 Master Agreement, 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; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

### **36. Assignment of Antitrust Rights**

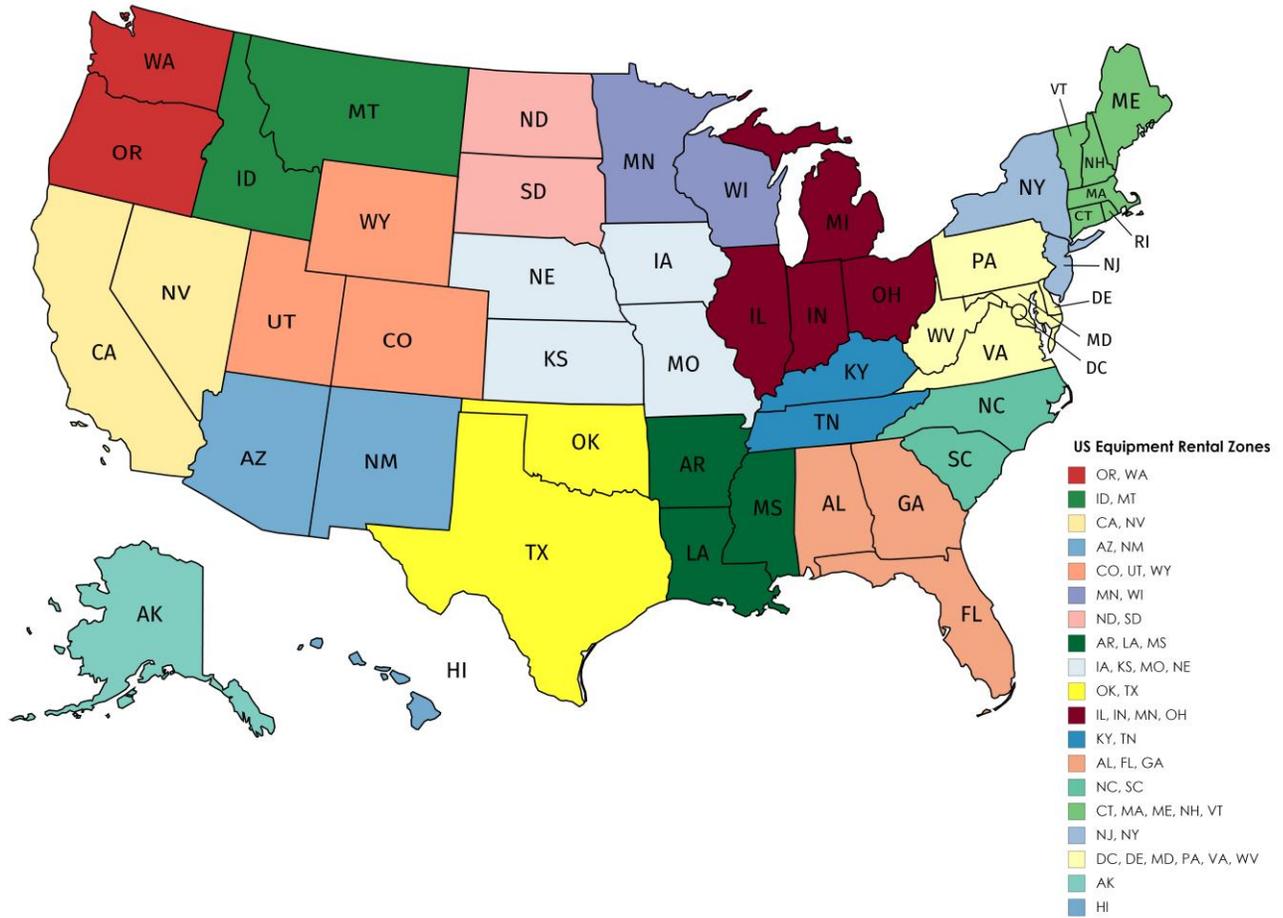
Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's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

### **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.

# Attachment 20.5

## PRICE RESPONSE REGION MAP



Attachment 20.6  
Tab-A US Equipment Rental Zones

<b>Zone</b>	<b>State Groupings</b>
1	OR, WA
2	ID, MT
3	CA, NV
4	CO, UT, WY
5	MN, WI
6	ND, SD
7	AR, LA, MS
8	IA, KS, MO, NE
9	OK, TX
10	IL, IN, MN, OH
11	KY
12	TN
13	AL, FL, GA
14	NC, SC
15	CT, MA, ME, NH, VT
16	NJ, NY
17	DC, DE, MD, PA, VA, WV
18	AK
19	HI















The State of Vermont is seeking information regarding rental services around the equipment categories outlined below. Vendors should designate the category of equipment they provide rental equipment for in their response.

RENTAL ZONES >>>>>>				13			14			15			16			17			18			19												
LEASE PERIOD >>>>>				Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	
Category of Equipment	MAKE	MODEL	SIZE																															
40' manlift straight boom				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$		
60' manlift straight boom				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Generators																																		
2500 watt generator				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
3600 watt generator				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
5000 watt generator				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
10,000 watt generator				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Heaters																																		
Heater, 20 kW Electric				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Heater, Kerosene, 81K-200K BTU				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Heater, Ground, up to 2500 sq ft				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Lawn & Landscape, Chippers, Brush Cutters																																		
Walk Behind Brush Cutter				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Chipper, 12"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Stump Grinder, 20-30 hp				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Lawn & Landscape, Other																																		
Hydroseeder, 400-600 gal				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Straw Blower, Medium				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
Chain Saw, 20"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Trimmer				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Mower, Zero Turn				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Post Driver				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Stump Grinder				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Light Towers																																		
50HZ-T4F 60HZ-T4F 60HZ-T4F 60HZ-T4F 60HZ-T4F 60HZ-T4F				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Pumps, Hoses and Accessories																																		
4" diesel double diaphragm pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
4" electric self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
6" electric self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
6" diesel self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
8" electric self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
8" diesel self-priming silent trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
10" diesel self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
10" diesel self-priming silent pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
12" electric self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
12" diesel self-priming trash pump				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Hose 2 20 PVC suction-camlock				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Hose 2x50 layflat discharge camlock				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Hose 3x20 pvc suction-camlock				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Hose 4x50 layflat discharge camlock				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Hose 8x20 stainless-flanged				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Pressure Washers																																		
Pressure washer 4000 PSI				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Pressure washer gas 3000 PSI				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Scaffolding																																		
SCAFFOLD FRAME 5' X 5' SINGLE LADDER				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
SCAFFOLD PLANK 19" X 10"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
SCAFFOLD ROLLING 6' X 30"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Telehandlers																																		
Telehandler, Capacity Max Load, 5,000 lbs.				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Telehandler, Capacity Max Load, 6,000 lbs.				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Telehandler, Capacity Max Load, 7,000 lbs.				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Tools, Power and Hand																																		
SAW CUT-OFF 12" GAS				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
SAW CUT-OFF 14" GAS				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
SAW TILE 10"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
DIAMOND BLADE 14"				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
LASER SELF LEVELING CONSTRUCTION				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Trench, Boxes and Shoring																																		
TRENCH BOX 8' X 6'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 8'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 10'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 16'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 12'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 20'				\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
TRENCH BOX 8' X 24'				\$	\$	\$	\$	\$</																										

Attachment 20.6  
Tab-E Additional Offerings

Insert additional lines under each category as necessary.

--

Category of Equipment	Make	Model	Size	Rental Zone(s)	Pickup & Delivery Charges	Site Delivery Emergency Response	Site Delivery Normal Response	Daily	Weekly	Monthly	Additional Information
Aerial Work Platforms					\$			\$	\$	\$	
Air Compressors and Air Tools					\$			\$	\$	\$	
Air Handlers and Chillers					\$			\$	\$	\$	
Arrow Boards and Traffic Control					\$			\$	\$	\$	
Compaction, Tampers, Rollers, Rammers					\$			\$	\$	\$	
Concrete & Masonry Tools					\$			\$	\$	\$	
Containment Products					\$			\$	\$	\$	
Dump Trucks					\$			\$	\$	\$	
Earthmoving Equipment, Backhoe					\$			\$	\$	\$	
Earthmoving Equip, Dozer					\$			\$	\$	\$	
Earthmoving Equip, Excavators					\$			\$	\$	\$	
Earthmoving Equip, Mini Excavator					\$			\$	\$	\$	
Earthmoving Equip, Skid Steer Loader					\$			\$	\$	\$	
Earthmoving Equip, Track Loader					\$			\$	\$	\$	
Earthmoving Equip, Sweeper					\$			\$	\$	\$	
Earthmoving Equip, Tractors					\$			\$	\$	\$	
Earthmoving Equip, Trencher					\$			\$	\$	\$	
Earthmoving Equip, Wheel Loaders					\$			\$	\$	\$	
Forklifts & Material Handling					\$			\$	\$	\$	
Generators					\$			\$	\$	\$	
Heaters					\$			\$	\$	\$	
Lawn & Landscape, Chippers, Brush Cutters					\$			\$	\$	\$	
Lawn & Landscape, Other					\$			\$	\$	\$	
Light Towers					\$			\$	\$	\$	
Mobile Offices					\$			\$	\$	\$	
Pumps, Hoses and Accessories					\$			\$	\$	\$	
Pressure Washers					\$			\$	\$	\$	
Scaffolding					\$			\$	\$	\$	
Storage Containers					\$			\$	\$	\$	
Tanker Trucks					\$			\$	\$	\$	
Tanks, Frac, Poly, Stainless Steel					\$			\$	\$	\$	
Telehandlers					\$			\$	\$	\$	
Tools, Power and Hand					\$			\$	\$	\$	
Trench, Boxes and Shoring					\$			\$	\$	\$	
Vacuum Trucks					\$			\$	\$	\$	
Water Treatment, Filtration Systems					\$			\$	\$	\$	
Water Trucks, Trailers					\$			\$	\$	\$	
Welders					\$			\$	\$	\$	
OTHER:					\$			\$	\$	\$	

COMPANY NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

## Attachment 20.7

### REFERENCE QUESTIONNAIRE REFERENCE'S RESPONSE TO: PCA 19-01

## NASPO ValuePoint Master Agreement for Equipment Rental Service

**BIDDER NAME (Company/Organization):** \_\_\_\_\_

**VENDOR NAME (Company/Organization):** \_\_\_\_\_ has submitted a Proposal to the State of Vermont, Office of Purchasing and Contracting, to provide the following services: [REDACTED]. We've chosen you as one of our references.

### INSTRUCTIONS

1. Complete **Section I. RATING** using the Rating Scale provided.
2. Complete **Section II. GENERAL INFORMATION** (*This section is for information only and will not be scored.*)
3. Complete **Section III. ACKNOWLEDGEMENT** by manually signing and dating the document. (*Reference documents must include an actual signature.*)
4. E-mail or fax **THIS PAGE** and your completed reference document, **SECTIONS I through III** to:

RFP Lead: Brian Berini  
Commodities Procurement Administrator

E-mail: brian.berini@vermont.gov

Fax: 802-828-2222 [REDACTED]

5. This completed document **MUST** be received no later than May 30, 2019 4:30 p.m. Eastern Time. Reference documents received after this time will not be considered. **References received without an actual signature will not be accepted.**
6. DO **NOT** return this document to the Bidder (Vendor).
7. In addition to this document, the State may contact references by phone or e-mail for further clarification, if necessary.

## Section I. RATING

Using the Rating Scale provided below, rate the following numbered items by circling the appropriate number for each item:

Rating Scale	
Category	Score
Poor or Inadequate Performance	0
Below Average	1 – 3
Average	4 – 6
Above Average	7 - 9
Excellent	10

Circle **ONE** number for each of the following numbered items:

1. Rate the overall quality of the vendor's services:

**10    9    8    7    6    5    4    3    2    1    0**

2. Rate the response time of this vendor:

**10    9    8    7    6    5    4    3    2    1    0**

3. Rate how well the agreed upon, planned schedule was consistently met and deliverables provided on time.  
*(This pertains to delays under the control of the bidder):*

**10    9    8    7    6    5    4    3    2    1    0**

4. Rate the overall customer service and timeliness in responding to customer service inquiries, issues and resolutions:

**10    9    8    7    6    5    4    3    2    1    0**

5. Rate the knowledge of the vendor's assigned staff and their ability to accomplish duties as contracted:

**10    9    8    7    6    5    4    3    2    1    0**

6. Rate the accuracy and timeliness of the vendor's billing and/or invoices:

**10    9    8    7    6    5    4    3    2    1    0**

7. Rate the vendor's ability to quickly and thoroughly resolve a problem related to the services provided:

**10    9    8    7    6    5    4    3    2    1    0**

8. Rate the vendor's flexibility in meeting business requirements:

10 9 8 7 6 5 4 3 2 1 0

9. Rate the likelihood of your company/organization recommending this vendor to others in the future:

10 9 8 7 6 5 4 3 2 1 0

**Section II. GENERAL INFORMATION**

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1. Please include a brief description of the services provided by this vendor:

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2. During what time period did the vendor provide these services for your business?

Month: \_\_\_\_\_ Year: \_\_\_\_\_ TO Month: \_\_\_\_\_ Year: \_\_\_\_\_

**Section III. ACKNOWLEDGEMENT**

---

I affirm to the best of my knowledge that the information I have provided is true, correct, and factual:

\_\_\_\_\_  
Signature of Reference

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail address

## Attachment 20.8

### REFERENCES

#### INSTRUCTIONS TO THE BIDDER:

Bidders will be scored on three (3) completed reference questionnaires (if fewer than three (3) are received prior to the RFP closing date and time, the Bidder will receive a zero (0) for all questions not scored and questionnaires not received). Scores from reference questionnaires will be averaged. The reference questionnaires must be from individuals, companies, or agencies for whom the Bidder provided products or services that are similar in nature and scope to those requested by this RFP, and within the last three (3) years from the date this RFP was posted. Only one (1) reference will be received/qualify per reference company/agency. If multiple references are received from the same company/agency, only the first received will be accepted.

References outside the requisite number of years (*See* paragraph above), and references determined by the State, in its sole discretion, to be not of a similar nature and scope to the products or services requested in this RFP will receive a score of zero (0). **Determination of similar will be made by using the information provided by the reference in Section II of the Reference Questionnaire, General Information, and any additional information provided by the reference, or otherwise obtained by the State.** It is in the State's sole discretion as to whether or not any references will be contacted for clarification or for additional information.

**REFERENCES MUST BE RECEIVED BY THE RFP LEAD, DIRECTLY FROM THE REFERENCE, IN ORDER TO BE CONSIDERED.**

1. Bidders must complete the following information on page 2 of the "Reference's Response To" document before sending it to the Reference for response.

- a. Print the name of your reference (company/organization) on the "REFERENCE NAME" line.
- b. Print the name of your company/organization on the "BIDDER NAME" line.
- c. Be certain that the RFP closing date and time in Instruction 5, on the following page, is correct.

2. Send the "Reference's Response To" document to your references to complete.

**NOTES:** It is the Bidder's responsibility to follow up with its references to ensure timely receipt of all questionnaires. Bidders may e-mail the RFP Lead prior to the RFP closing date to verify receipt of references.

References are not scored by a Technical Proposal evaluation committee. References will provide scores via the reference questionnaires and the RFP Lead will enter the scores for qualifying references into a spreadsheet that will calculate averaged scores.

Attachment 20.9  
Detailed Sales Report Template

NASPO ValuePoint Cooperative Contract Detailed Sales Report

Contractor:

Quarter:

No Quarterly Sales

Vendor Name	Vendor Contract Number	State	Customer Type	Bill to Name	Bill to Address	Bill to City	Bill to Zipcode	Delivery Name	Delivery Address	Delivery City	Delivery Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Delivery Date	Invoice Date	Invoice Number	Product Description	UNSPSC Commodity	NASPO ValuePoint Price	Quantity	Total Price	Admin Fee	

Attachment 20.9  
Detailed Sales Reporting Key

Field Name	Field Description
VENDOR	The awarded Contractor's name
VENDOR CONTRACT NUMBER	Lead State assigned contract number (using Lead State's numbering protocol)
CUSTOMER STATE	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.) in which the purchasing entity resides
CUSTOMER TYPE (SEGMENT)	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME	Customer (agency) Bill to name
BILL TO ADDRESS	Customer (agency) Bill to address
BILL TO CITY	Customer (agency) Bill to city
BILL TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
DELIVERY NAME	Customer (agency) Location of rental equipment being delivered to
DELIVERY ADDRESS	Customer (agency) Location of rental equipment being delivered to
DELIVERY CITY	Customer (agency) Location of rental equipment being delivered to
DELIVERY ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER	Vendor assigned order number
CUSTOMER PO NUMBER	Customer provided Purchase Order Number
CUSTOMER NUMBER	Vendor assigned account number for the purchasing entity
ORDER TYPE	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)	(mm/dd/ccyy)
DELIVERY DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Vendor assigned Invoice Number
PRODUCT DESCRIPTION	Product description of item rented
UNSPSC	Commodity-level code based on UNSPSC code rules (8 Digits)
NASPO ValuePoint PRICE	Contract Price- US Currency (\$99999.999)
QUANTITY	Quantity Invoiced (99999.999) In hours or days
TOTAL PRICE	Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.999)
NASPO ValuePoint ADMIN FEE	Administrative Fee based on Total Price - US Currency (\$999999.999)

## **Attachment 20.10**

### **PROPOSAL CHECKLIST RFP Equipment Rental Services**

This checklist is provided as a convenience for Proposers and may not be comprehensive. It is the Proposers responsibility to review the solicitation and submit all required information and documentation.

**Section 1.4.2**

**Section 1.4.3**

**Section 1.4.4**

**Section 1.4.5**

**Section 1.4.6**

**Section 1.4.7**

**Section 2.5**

**Section 2.18**

**Section 11**

**Section 17**

**Section 18**

**Section 19**

**Attachment 20.3**

**Attachment 20.6**

**Attachment 20.8**

**Attachment 20.9**

## I. REQUIRED STATE OF MARYLAND CONTRACT TERMS

The State of Maryland requires the use of the following contractual terms and conditions in a solicitation and reserves to right to modify, add, or delete these or any other needed terms and conditions prior to executing its PA.

### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace vendor ID number is (eMM Number).
- 1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_(Financial Proposal date), as modified by any Best and Final Offer thereto.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for EQUIPMENT RENTAL SERVICES Solicitation # PCA 19-01, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

### 2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this PA and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this PA and the Exhibits, the terms of the PA shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:
  - Exhibit A – Maryland Proposal Affidavit
  - Exhibit B – The Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_.
  - Exhibit C – NASPO Value Point Master Agreement # \_\_\_\_\_ resulting from EQUIPMENT RENTAL SERVICES, Solicitation # PCA 19-01 and any amendments thereto issued by the State of Vermont.
  - Exhibit D – The Financial Proposal of the Contractor dated \_\_\_\_\_.
  - Exhibit E -- REQUEST FOR SEALED PROPOSAL (RFP) # PCA 19-01 EQUIPMENT RENTAL SERVICES dated March 22, 2019, as amended.
- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the

Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### **3. Period of Performance**

- 3.1 The initial term of any Master Agreement is anticipated to be established for an initial period of two (2) years from the date of award, with the option of the Lead State to renew any contract for up to three (3) additional 12-month periods.
- 3.2 The term of this PA begins on the date the Contract is signed by the State following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until \_\_\_\_\_ ("Initial Term").
- 3.3 In its sole discretion, the State shall have the unilateral right to extend the PA for up to three (3) additional 12-month periods at the prices established in the Master Agreement. "Term" means the Initial Term and any Renewal Term(s).
- 3.4 The Contractor's performance under the PA shall commence as of the date provided in a written Notice to Proceed issued by the State's Contract Monitor.
- 3.5 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this PA, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this PA; and any other obligations specifically identified, shall survive expiration or termination of the PA.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this PA, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.
- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor.

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

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

The State is not liable for interest:

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

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this PA shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this PA
- 5.2 The Contractor agrees that at all times during the term of this PA and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this PA shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this PA are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this PA, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this PA.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this PA. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this PA, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the State or developed by Contractor relating to the PA, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

## **7. Patents, Copyrights, and Intellectual Property**

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this PA shall belong to the party that owned such rights immediately prior to the Effective Date ("Pre-Existing Intellectual Property"). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the PA.

- 7.2 Except for (1) information created or otherwise owned by the State or licensed by the State from third parties, including all information provided by the State to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the State will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this PA as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the State, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this PA.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the State’s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## 8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality and intellectual property terms substantially equivalent to those of this PA.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

## 9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **Section 39 of this PA**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **Section 39 of this PA**.

## 10. Indemnification and Notification of Legal Requests

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this PA and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a

reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

#### **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

#### **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **13. Maryland Law Prevails**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this PA shall be construed to refer to such Code sections as are from time to time amended.

#### **14. Nondiscrimination in Employment**

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

#### **15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

#### **16. Non-Availability of Funding**

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

knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **18. Termination for Convenience**

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

#### **19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this PA.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### **20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

#### **21. Pre-Existing Regulations**

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

#### **22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### **23. Political Contribution Disclosure**

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

Additional information is available on the State Board of Elections website:

[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

#### **24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this PA for (i) five (5) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the PA. All records related in any way to the PA are to be retained for the entire time provided under this section.

#### **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this PA. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the PA.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The State may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the State's election. The State may copy any record related to the services performed pursuant to the PA. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the State has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the PA.

#### **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this PA; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this PA.

## **27. Cost and Price Certification**

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Master Agreement and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations under this PA without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this PA or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a PA after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this PA, exhibits, and attachments. The PA shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
  - (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 7 "Patents, Copyrights, Intellectual Property" of this PA;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this PA and regardless of the basis on which the claim is made, Contractor's liability shall not exceed two (2) times the total value of the PA or \$1,000,000, whichever is greater. The above limitation of liability is per incident.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this PA, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this PA are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 10 of this PA shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3 In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this PA, Contractor agrees that it is responsible for performance

## **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this PA, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, PA or may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this PA and may result in termination of this PA, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.3 As a condition of entering into this PA, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this PA and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the State, in all subcontracts.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the State, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the PA work without affecting the completion date(s) for the Contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the State concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the State and the Contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the State.

- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the State may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the State determines that the Contractor is not in compliance with certified MBE participation goals, then the State will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - (c) If the State determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the State requires, then the State may:
    - i. Terminate the Contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
  - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### **32. Living Wage**

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

- C. For the purposes of this PA, the PA is considered a Tier 1 contract. Additional information regarding the State's living wage requirement is contained in Exhibit F. Contractor must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement Exhibit F with this PA.
- D. If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the State may withhold payment of any invoice or retainage. The State may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

### **33. Use of Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the State does not guarantee a minimum or maximum number of units or usage in the performance of this PA.

### **34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

### **35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this PA (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this PA; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this PA.

### **36. Miscellaneous**

- 36.1 Any provision of this PA which contemplates performance or observance subsequent to any termination or expiration of this PA shall survive termination or expiration of this PA and continue in full force and effect.
- 36.2 If any term contained in this PA is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this PA, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this PA are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this PA.
- 36.4 This PA may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

### **37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The State may change the Contract Monitor at any time by written notice to the Contractor.

37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The State may change the Procurement Officer at any time by written notice to the Contractor.

**38. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

<<contractMonitorName>>

<<contractManagerAddress>>

Phone Number: <<contractManagerPhoneNumber>>

E-Mail: <<contractManagere-mail>>

With a copy to:

<<procurementOfficerName>>

<<issuingAgencyName>> (<<ISSUINGAGENCYACRONYM>>)

<<procurementOfficerAddress>>

Phone Number: <<procurementOfficerPhoneNumber>>

E-Mail: <<procurementOfficerE-mail>>

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: \_\_\_\_\_

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: \_\_\_\_\_

Attn: \_\_\_\_\_

**39. Security Requirements**

The following requirements are applicable to the PA:

39.1 Employee Identification

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the PA where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the PA.

### 39.2 Security Clearance / Criminal Background Check

- A. A criminal background check for any Contractor Key Personnel within four (4) months of PA execution.
- B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in subparagraph A. This check may be performed by a public or private entity.

### 39.3 Information Technology

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed in this Section 39;
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the PA; and
- 3) along with Contractor Personnel, (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### 39.4 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the PA and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cyber security framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the PA (the Contractor may augment this list with additional controls):
  - 1) Establish separate production, test, and training environments for systems supporting the services provided under the PA and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in this Section 39.4.

- 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <http://iase.disa.mil/Pages/index.aspx>, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.
- 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization security measures.
- 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
- 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2: <http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default "deny all" and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the PA. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the

earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the PA.

14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.

15) Ensure State data is not processed, transferred, or stored outside of the continental United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.

16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Manager to obtain approval by the State to connect Contractor -owned equipment to a State LAN/WAN.

17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the PA; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.

18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the PA.

### 39.5 Security Plan

A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.

B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the PA.

### 39.6 Security Incident Response

A. The Contractor shall notify the Department in accordance with this section when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:

- 1) notify the Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Manager, Department chief information officer and Department chief information security officer;
- 2) notify the Department within one Business Day (as defined in the State of Maryland RFP template available: (<http://procurement.maryland.gov/procurement-staff/> ) if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
- 3) provide written notice to the Department within one Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.

B. Contractor's notice shall identify:

- 1) the nature of the unauthorized use or disclosure;
- 2) the State data used or disclosed,
- 3) who made the unauthorized use or received the unauthorized disclosure;
- 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the PA. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the PA.

D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### 39.7 Data Breach Responsibilities

A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:

- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
- 2) Cooperate with the State to investigate and resolve the data breach;
- 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
- 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.

B. If a Data Breach is a direct result of the Contractor's breach of its PA obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the PA's limitation of liability.

39.8 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the PA.

39.9 Provisions in Section 39 shall survive expiration or termination of the PA.

#### **40. Contractor Furnished Agreements**

Contractor shall furnish any and all agreements and terms and conditions the Contractor expects the State to sign or to be subject to in connection with or in order to use the Contractor's services under this PA. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this PA (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided to it in a Contractor's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.

#### **41. False Statements**

41.1 In accordance with Md. Code Ann., State Finance and Procurement Article, § 11-205.1 and in connection with a procurement contract a person may not willfully:

- (1) falsify, conceal, or suppress a material fact by any scheme or device;
- (2) make a false or fraudulent statement or representation of a material fact; or
- (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

41.2 A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

41.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

#### **43. Problem Escalation Procedure**

43.1 Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the PA especially problems that are not resolved to the satisfaction of the State within appropriate timeframes. The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

43.2 The Contractor must provide the PEP no later than ten (10) Business Days after PA execution. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each PA year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the PA will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- a. The process for establishing the existence of a problem;

b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;

- c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- d. Expedited escalation procedures and any circumstances that would trigger expedited them;
- e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

43.3 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the PA or applicable law.

#### **44. Invoicing**

44.1 All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- (1) Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned (Blanket) Purchase Order number(s);
- (9) Goods or services provided, including equipment provided and the number of hours worked by respective employees and the dates and times those hours were worked accompanied by signed timesheets; and
- (10) Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

44.2 The Department reserves the right to reduce or withhold PA payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the PA or otherwise materially breaches the terms and conditions of the PA or Master Agreement until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the PA, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

44.3 The Contractor shall submit invoices with the information requested in 44.1 no later than the 15<sup>th</sup> of each month for services provided in the previous month.

#### **45. Insurance**

45.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the PA by the Contractor, its agents, servants, employees, or subcontractors, with a minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.

45.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance, including cyber liability, with minimum limits of \$5,000,000 per claim and annual aggregate.

45.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

45.4 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and minimum a single loss retention not to exceed \$10,000.

45.5 Within five (5) Business Days of recommendation for PA award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- b. Commercial General Liability as required in Section 45.1.
- c. Errors and Omissions/Professional Liability as required in Section 45.2.
- d. Automobile and/or Commercial Truck Insurance as required in Section 45.3.
- e. Crime Insurance as required in Section 44.4.

45.6 The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers' Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Workers' Insurance Fund). This means the faces of the certificates of insurance for these policies must state, "The State of Maryland is an Additional Insured." All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.

45.7 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this PA obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

#### **46. eMaryland Marketplace**

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

#### **47. Verification of Registration and Tax Payment**

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor

State of Maryland

<<ISSUINGAGENCYNAME>>

(<<ISSUINGAGENCYACRONYM>>)

By:

By: <<agencyContractSigner>>,

<<agencyContractSignerTitle>>

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

Approved for form and legal sufficiency

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_

(Date)

(BPW Item #)

<b>Exhibit A – PROPOSAL AFFIDAVIT</b>
---------------------------------------

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/proposal on this project, the Bidder/Offeror has considered all Bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal. As part of its Bid/proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal.

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) -(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;

- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)— (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;

- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
    - (a) A court:
      - (i) Made the finding; and
      - (ii) Decision became final; or
    - (b) The finding was:
      - (i) Made in a contested case under the Maryland Administrative Procedure act; and
      - (ii) Not overturned on judicial review; or
  - (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):
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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
  - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
- 
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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/proposal is submitted.

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
  - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
  - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

**L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL**

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions

intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

**N. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the bid or bid/proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

**O. ACKNOWLEDGEMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

By: \_\_\_\_\_  
*Signature of Authorized Representative and Affiant*

Printed Name: \_\_\_\_\_  
*Printed Name of Authorized Representative and Affiant*

Title: \_\_\_\_\_  
*Title*

Date: \_\_\_\_\_  
*Date*

\_\_\_\_\_

**Exhibit B – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

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

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

## C. FINANCIAL DISCLOSURE AFFIRMATION

## I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

## I FURTHER AFFIRM THAT:

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

## E. DRUG AND ALCOHOL FREE WORKPLACE

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

## I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: \_\_\_\_\_

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**Exhibit C – Maryland Living Wage Requirements Affidavit of Agreement**

**Maryland Participating Addendum for Master Agreement No.** \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

- Offeror is a nonprofit organization
- Offeror is a public service company

- Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract Is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_ (initial here if applicable) The Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

Date

\_\_\_\_\_

Title

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Witness Name (Typed or Printed)

---

Witness Signature

Date

**CONTRACTOR TO SUBMIT THIS AFFIDAVIT WITH PA**



## State Terms and Conditions

**ACCESS AND RETENTION OF RECORDS:** Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**COMPLIANCE WITH LAWS:** Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**REDUCTION OF FUNDING:** State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

**TAX EXEMPTION:** State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**STATE OF MONTANA ADMINISTRATIVE FEE:** The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this Participating Addendum.

**REQUIRED REPORTING:** Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

## **Federal Terms and Conditions (Non-Construction)**

### **1. NONDISCRIMINATION**

The Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, the Contractor agrees to comply with the following:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

### **2. LOBBYING**

a. The Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

### **3. DRUG-FREE WORK PLACE**

The Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

### **4. ENVIRONMENTAL PROTECTION**

a. The Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the state any impact this contract may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

## **5. USE OF UNITED STATES FLAG VESSELS**

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers ( air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

## **6. DEBARMENT AND SUSPENSION**

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

## **7. BUY AMERICAN ACT**

The Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

## **8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES**

The Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

#### **9. COPELAND "ANTI-KICKBACK" ACT**

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

#### **10. CONTRACT WORK HOURS AND SAFETY STANDARDS**

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act.(40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

#### **11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED**

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### **14. PROCUREMENT OF RECOVERED MATERIALS**

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

220-RICR-30-00-13

## TITLE 220 – DEPARTMENT OF ADMINISTRATION

### CHAPTER 30 – PURCHASES

#### SUBCHAPTER 00 – N/A

#### PART 13 – General Conditions of Purchase

### 13.1 Purpose

The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the State of Rhode Island ("State") and a Vendor. These General Conditions, along with items specified in § 13.4 of this Part herein, shall serve as the Contract with the State regardless of the method of procurement.

### 13.2 Definitions

- A. For the purposes of this Part, the following definitions shall apply:
1. "Contract" means a Purchase Order, Purchase Agreement, and/or Letter of Authorization issued by the Division, along with any and all contractual documents incorporated by reference by the Division.
  2. "Purchase agreement" means a written document formally issued by the Division to a Vendor that binds the parties to general terms, but does not represent a specific order for goods or services. A Purchase Agreement may include:
    - a. A "Statewide purchase agreement" or "Master price agreement" or "MPA," which serves as an agreement for more than one agency, but does not include a specific quantity until a Purchase Order is issued; or
    - b. An "Agency purchasing agreement," or "Agency pricing agreement," or "APA," which serves as an agreement for one agency, but does not include a specific quantity until a Purchase Order is issued;
  3. "Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the Division indicating a desire to enter into contracts with the State of Rhode Island, or with whom a Contract is executed by the State Purchasing Agent.

- B. All other terms contained in the State Purchases Act and State Procurement Regulations and used herein shall have the same meanings.

### **13.3 Procurement Process**

- A. Pricing

All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary in the Purchase Order or Purchase Agreement.

- B. Cost of Preparation

All costs associated with the preparation, development and submission of bids or proposals and/or protests arising therefrom, in response to solicitations issued on behalf of the State, shall be the Vendor's sole responsibility. The State will not reimburse any Vendor for such costs.

- C. Selection

1. Vendor bids and proposals shall be evaluated and Purchase Orders or Purchase Agreement issued with reasonable promptness and by written notice to the successful Vendor (only); bids and proposals are considered to be irrevocable for a period of sixty (60) days following the opening date unless expressly provided for to the contrary in the solicitation document, and may not be withdrawn during the specified period without the express written permission of the State Purchasing Agent.
2. The State reserves the right, before making an award, to initiate investigations as to whether or not the materials, equipment, supplies, services, qualifications, integrity, capability, capacity, and/or facilities offered by the Vendor meet the requirements set forth in the solicitation and are ample and sufficient to ensure the proper performance of the Contract in the event of award. Failure to pay subcontractors on previous Vendor Contracts may be considered (also see § 13.5 of this Part herein). If upon such examination it is found that the conditions of the solicitation are not complied with, and/or that the goods or services proposed to be furnished do not meet the requirements called for in the solicitation, and/or that the services, qualifications, integrity, capability, capacity and/or facilities of the Vendor are not satisfactory, then the State may reject Vendor's bid or proposal at the State's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before issuance of a Purchase Order or Purchase Agreement. If such examination is made, it in no way relieves the Vendor from fulfilling all requirements and conditions of the Contract.

3. Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the solicitation, offers for alternate specifications, or offers which are made subject to different terms and conditions, including form contracts, other than those specified by the State may be, at the sole discretion of the State Purchasing Agent:
  - a. Rejected as being non-responsive; or,
  - b. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or,
  - c. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State.
  - d. Acceptance or rejection of alternates or counter-offers by the State Purchasing Agent shall not constitute a precedent and shall not be considered to be binding on successive solicitations or procurements.
4. Vendor bids and proposals must bear an authorized signature or certification in a form approved by the State Purchasing Agent. Vendor bids and proposals which do not bear the required signature or certification may be deemed to be non-responsive to the solicitation. Bids submitted in pencil will not be accepted.
5. Vendor bids and proposals must utilize the unit of measure specified in the solicitation. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
6. The State Purchasing Agent reserves the right to determine whether a Vendor's bid or proposal is Responsive to a solicitation and whether a Vendor is Responsible.
7. The State Purchasing Agent reserves the right to reject any and all bids or proposals in whole or in part, to waive technical defects, irregularities, and omissions, to give consideration to a Vendor's past performance where, in the State Purchasing Agent's judgment, the best interest of the State will be served, to require additional competitive negotiations and/or to issue a request for best and final offers.
8. The State Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the solicitation, unless the Vendor expressly indicates otherwise in its bid or proposal that doing so is not acceptable.
9. Preferences may be given as authorized by law or regulation, including, but not limited to, the following:

- a. Preference may be given to bids for products raised or manufactured in Rhode Island, in the event that all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or service provider whose headquarters or primary place of business is located within the State, or in the event of a joint venture with a Vendor or service provider whose headquarters or primary place of business is within the State, shall receive preference.
  
- b. **MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of R.I. Gen. Laws Chapter 37-14.1 reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:
  - (1) The offer is fully responsive to the terms and conditions of the Request;
  - (2) The price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service;
  - (3) The firm making the offer has been certified by the R.I. Department of Administration, Office of Diversity Equity and Opportunity to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. A minimum of ten percent [10%] of the dollar value of the work performed against contracts shall be performed by certified Minority Business Enterprises where it has been determined that subcontract and/or supply opportunities exist, and where certified Minority Business Enterprises are available. A vendor may count 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE certified as a regular dealer or supplier, and 100% of such expenditures when obtained from an MBE certified as a manufacturer, towards the MBE participation requirement under R.I. Gen. Laws § 37-14.1-6. For materials or supplies obtained from firms certified as a broker or manufacturer's rep, vendors may receive MBE participation credit only for the fees and commissions charged for the procurement of the goods and materials, but not the cost of the materials themselves. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

10. The State Purchasing Agent reserves the right to act in the State's best interest regarding awards caused by clerical errors or omissions by the Division.
11. Any Contract issued by the Division is subject to the resolution of any timely bid protest.
12. Any objections to specifications or requirements in a solicitation must be received by the Chief Purchasing Officer in accordance with State Procurement Regulation (§ 1.6 of this Subchapter).

D. Public Records

Vendors are advised that all records submitted to the Division may be subject to disclosure in accordance with the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq.* and/or in the course of litigation through discovery. Any records submitted which a Vendor believes are of a privileged or confidential nature or are not subject to disclosure in accordance with R.I. Gen. Laws § 38-2-2 or other applicable laws, should be clearly marked. The Vendor should provide a brief explanation as to why each portion of information marked as confidential or privileged should be withheld from public disclosure and cite the specific provision of R.I. Gen. Laws § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the Division and/or agency and/or public institution of higher education will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

In all solicitations, the words "or equal" shall be understood to apply to each article when a manufacturer's name or catalog are referenced unless the solicitation specifically states "no substitutions." When submitting a bid or proposal which includes items other than those specified in the solicitation, the Vendor must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the Vendor proposes to furnish; otherwise, the bid or proposal shall be construed as being submitted for the identical commodity described in the solicitation. The State Purchasing Agent reserves the right to determine whether or not the substitute item(s) offered by the Vendor is an approved equal to the item(s) specified in the solicitation.

1. All standards are minimum standards except as otherwise provided for in the solicitation.
2. Samples must be submitted to the Division of Purchases in accordance with the solicitation. Samples must be furnished free of charge with the understanding that they shall not be returned to the Vendor.

3. All samples submitted by Vendors may be subject to examination or testing by any laboratory the State Purchasing Agent may designate.
- F. COLLUSION - Vendor warrants that it has not, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of full competitive bidding.
- G. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

#### **13.4 Entire Agreement**

A. Incorporation

The Purchase Order, Purchase Agreement or Letter of Authorization issued by the Division, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the State and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:

1. The "State Purchases Act," R.I. Gen. Laws § 37-2-1, *et seq.*;
2. The Procurement Regulations adopted pursuant thereto;
3. The Vendor Certification Cover Form;
4. All other applicable provisions of the Rhode Island General Laws and applicable federal laws;
5. The specific requirements described in the solicitation and related solicitation documents;
6. These General Conditions of Purchase, along with applicable addenda as referenced in § 13.34 of this Part herein; and
7. The offer/proposal submitted by Vendor and accepted by the State.

B. Order of Precedence

Unless otherwise approved by the State Purchasing Agent, in the event of any express conflict or dispute regarding a Vendor's proposal, a Vendor's proposed standard terms of sale, the solicitation documents, statutes, regulations and/or these General Conditions of Purchase, the following order or precedence shall generally apply (with 1 being the highest level of precedence):

1. Federal laws and/or regulations (for federally funded contracts only)
2. Rhode Island General Laws;
3. State Procurement Regulations (Parts 1 through 13 of this Subchapter), General Conditions of Purchase and contract Addenda in addition to the General Conditions ("GC Addenda") (§ 13.34 of this Part);
4. The Purchase Order or Purchase Agreement issued by the Division;
5. The offer, proposal or bid submitted by the Vendor and to the extent accepted by the Division;
6. Solicitation documents issued by the Division; and
7. To the extent allowed by law, for an individual procurement, the State Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the State and/or to protect the health, safety and welfare of the State and its citizens.

C. Contract Contingencies

1. All Contracts are subject to the following:
  - a. All material communication between the State and any Vendor pertaining to any solicitation, award or management of a Contract shall be set forth in writing.
  - b. Vendor proposals shall be accepted by the Division with the understanding that the issuance of a Purchase Order, Purchase Agreement or Letter of Authorization shall be the only document which creates a binding Contract between the Vendor and the State. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver goods and/or services at the prices and in accordance with the conditions of Vendor's proposal. A Contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the Purchase Order. Additionally, any Contract shall be contingent upon the resolution of a timely bid protest.
  - c. No alterations or variations of the terms of the Contract shall be valid or binding upon an agency, the State, or the Division unless

submitted in writing and accepted by the State Purchasing Agent through issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the Division. Oral agreements or arrangements made by a Vendor with anyone, including an agency or agency employee, shall not be binding upon an agency, the State or the Division unless and until reduced to writing and approved by the State Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.

- d. Contracts shall remain in force for the term specified in the Purchase Order or Purchase Agreement or until all articles or services ordered before date of termination shall have been satisfactorily delivered or fully rendered and accepted by the State and thereafter until all terms and conditions have been met, unless:
  - (1) Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
  - (2) Extended upon written authorization of the State Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or
  - (3) Canceled by the State in accordance with other provisions stated herein.
- e. All Vendor obligations as described herein shall survive expiration, termination and/or cancellation of the Contract.

### **13.5 Relationship of Parties**

The selected Vendor must be fully qualified and capable in all material respects to provide the specified goods and/or services. Unless specifically provided for in the solicitation, the Vendor shall be an independent contractor and not an employee, agent, partner or joint venturer with the State. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the State may consider Vendor non-payment of subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the State. If the solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.

### **13.6 Specified Quantity Requirements**

- A. Except where expressly specified to the contrary, all solicitations are predicated on a specified quantity of goods or services, or for a specified level of funding. Provided, however, that:
1. If stated in the solicitation, the State reserves the right to modify the quantity, scope of service, or funding of any Contract, with no penalty or charge, by written notice to the Vendor; and,
  2. The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State shall not accept quantities greater than ten per cent [10%] of the specified quantity), or where the solicitation provides for other than exact quantities; and,
  3. Quantities and performance periods set forth in a Purchase Order or a Purchase Agreement may be increased or extended with approval of the State Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the Division.

### **13.7 Term and Renewal**

Where offers have been requested or Contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is subject to the appropriation of funding and is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive one-year terms, except where expressly specified to the contrary. Purchase Orders, Purchase Agreements, and/or Change Orders appearing to commit the State to obligations of funding or terms of performance in excess of twelve (12) months may be executed for administrative convenience, but are otherwise subject to this provision. In such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

### **13.8 Delivery**

- A. Delivery must be made as ordered and in accordance with the solicitation and Vendor's proposal. If delivery qualifications do not appear on the Vendor's proposal, then the proposal shall be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the State Purchasing Agent as to reasonable compliance with the delivery terms shall be final. The burden of proof for delay in delivery of an order shall rest with the Vendor. Except when authorized on the Purchase Order:

1. All prices shall be quoted F.O.B. destination, freight pre-paid with all transportation and handling charges paid by the Vendor;
2. Responsibility and liability for loss or damage shall remain with the Vendor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects, fraud and or Vendor's warranty obligations;
3. Deliveries shall be inside deliveries to other than a loading dock, front lobby or reception area and as designated in the Purchase Order; and,
4. Costs shall include all packaging and/or crating charges which shall be of durable construction, good condition, properly labeled and suitable for handling of contents.

### **13.9 Foreign Entities**

In accordance with R.I. Gen. Laws § 7-1.2-1401, no business entity shall have the right to transact business in Rhode Island until it shall have procured a certificate of authority to transact business in the State from the Rhode Island Secretary of State. The term "Entity" means a corporation, a business trust, or association, a real estate investment trust, a common-law trust, a sole proprietorship or any other unincorporated business, or entity including a partnership, whether general or limited, (including a registered limited liability partnership), a foreign limited liability company, or as defined in R.I. Gen. Laws § 7-1.2-1401.

### **13.10 Product Acceptance**

#### **A. Quality**

All goods offered or otherwise provided by Vendors shall be new, of the latest model or design, sourced from regular stock product inventories with all parts regularly used with the type of goods offered, without attachment(s) or part(s) substituted or applied contrary to manufacturer's recommendation and standard practice, of prime manufacture, and of first quality unless otherwise specified by the State.

#### **B. Rejection of Nonconforming Goods**

The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurement of services shall be construed to be work product, and subject to the provisions of this Section.

1. Failure by the State to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

2. Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive ordering, receipt, acceptance, or procurement of non-conforming goods.
3. If the Vendor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order. The State may then contract with a different Vendor and invoice the original Vendor for any differential in price over the original Contract price.
4. When materials, equipment or supplies are rejected, the same must be removed by the Vendor from State property within forty-eight (48) hours of notification, unless otherwise specified by the State. Rejected items left longer than forty-eight (48) hours or another time set by the State, shall be regarded as abandoned and the State shall have the right to dispose of those items at the Vendor's expense.

### **13.11 Ownership**

Unless otherwise specifically provided for in the solicitation, General Conditions, or General Conditions Addenda, all data, material and documentation prepared for the State shall be considered work for hire and belong exclusively to the State.

### **13.12 Product Warranties**

- A. All product or service warranties normally offered by the Vendor shall accrue to the State's benefit, in addition to any special requirements or benefits which may be stated in the solicitation and/or additionally offered by the Vendor in its bid or proposal. During the term of any maintenance period, but for no less than one year from acceptance, the Vendor shall warrant:
  1. The product or services shall perform according to the specific claims and representations made by the Vendor in its bid or proposal;
  2. The services or product offered by the Vendor are suitable for the ordinary purposes for which such product is used or services provided;
  3. The product or services offered by the Vendor are suitable for any special purposes identified in the solicitation or for which the State has relied on the Vendor's skill or judgment;
  4. The product was designed and the services performed in a commercially reasonable manner; and,
  5. The product or services are free from defects in material and workmanship.

- B. The State shall give notice of a warranty claim to the Vendor in a commercially reasonable manner, upon which, the Vendor shall repair or replace at no cost to the State the product or services. If the repaired or replaced product or services prove to be inadequate, or fail of their essential purpose, the Vendor shall refund the full amount of any payments that have been made by the State. The rights and remedies of the State under this Section are in addition to any other rights and remedies (including cover) provided by law or equity. Any alternate warranties proposed by a Vendor are subject to the provisions of § 13.3(C)(3) of this Part.

### **13.13 Payment**

- A. Unless otherwise provided for in the solicitation, Purchase Order or Agreement, payment (subject to retention or set-off, if applicable) shall not be made by the State until goods and are delivered or services performed, in full, and accepted. After such acceptance, payment shall not be due until a properly submitted invoice, with satisfactory documentation, is delivered to the State. Payment then shall be made promptly in accordance with R.I. Gen. Laws § 42-11.1-1, *et seq.*:
1. Vendor payment terms other than as set forth herein may be rejected as being non-responsive.
  2. No partial shipments will be accepted, unless provided for by the solicitation or Purchase Order.
  3. Where a question of quality or performance is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the State Purchasing Agent.
  4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount or rebate.
  5. If not rejected, payments for used portion of inferior or defective goods shall be made by the State on an adjusted price basis.
  6. Requests for payments on Contracts under architectural or engineering supervision must be authorized by the architect or engineer and submitted to the agency involved for approval.

### **13.14 Set-Off Against Payments**

Payments due the Vendor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent State taxes (or other just debt owed to the State), except where notice of deficiency for trust fund taxes is not a final assessment and still open for a hearing request or while the tax deficiency notice is pending in administrative hearing or from any judicial appeal therefrom.

### **13.15 Claims**

#### **A. Setoff**

Any claim against a Vendor may be deducted by the State from any money due it in the same or other transactions. If no deduction is made in such fashion, the Vendor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the State Purchasing Agent from demanding a price adjustment in any case when the good or service is delivered or is later found to deviate from the Contract.

#### **B. Damages for Claims**

The Purchasing Agent may assess dollar damages against a Vendor determined to be non-performing or otherwise in default of its contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification, rejection, and/or suspension. Vendor may appeal any assessment of damages in accordance with § 1.6 of this Subchapter.

### **13.16 Unused Balances**

Unless otherwise specified, all unused quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term stated in the Contract. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

### **13.17 Confidentiality**

#### **A. "Confidential Information"**

1. Whenever used in a Contract, the term "Confidential information" means:
  - a. Information exempt from disclosure to the public or other unauthorized persons under either Rhode Island or federal statutes or regulations; or
  - b. Information related to the State's infrastructure, operations, security, or personnel unless otherwise identified by the State in writing as non-confidential at the time of disclosure; or
  - c. Any other information which the State has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or

- d. State Data which includes User Data and the State's data used, processed, hosted, stored, or generated as a result of the Services. User Data means any and all information reflecting the access or use of the Services by or on behalf of the State or any authorized user, including any end user profile, visit, session, impression, information, click-through or click stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing; or
- e. Information that would ordinarily be reasonably considered confidential or proprietary in the light of the circumstances surrounding disclosure.

B. Form of Confidential Information

- 1. Confidential Information may take the form of, but is not limited to, plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, any and all personal and/or confidential information pertaining to State employees and/or State personnel, including, but not necessarily limited to, any and all personal and/or confidential healthcare and/or health and/or medical data and/or any other similar and/or related personal and /or confidential information, pertaining to State employees and/or State personnel or any other material or information supplied by or on behalf of the State, State Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the State. Confidential Information may be in tangible or intangible form. The State's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Vendor's obligation to keep such information confidential in accordance with these terms.
- 2. Exemptions to Confidential Information
  - a. Notwithstanding the foregoing, and except as provided in the Contract or Addenda, the term "Confidential information," shall not be construed to include information that:
    - (1) Is or becomes readily available in public records or documents, other than as a result of an inappropriate disclosure by Vendor or other entity or persons acting on behalf of Vendor, or

- (2) Can be documented to have been known by Vendor prior to its release to the Vendor by the State without an obligation of confidentiality, or
- (3) Is disclosed pursuant to applicable Rhode Island law and/or federal law, judicial action or government regulations.

C. Vendor Acknowledgement

Vendor acknowledges that the Confidential Information is confidential and proprietary information and that its protection is essential to the security and mission of the State. It is understood that the Vendor is not granted an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information other than any licensing provisions as defined in a Contract and/or agreement between the State and Vendor.

D. Vendor's Agents

Vendor acknowledges and also shall require its employees, officers, independent contractors, and subcontractors, agents and any other entities acting on its behalf (collectively "Affiliates") to:

1. Copy, reproduce or use Confidential Information only for the purpose described in the Contract and not for any other purpose unless specifically authorized to do so in writing by the State; and
2. Not permit any other person or entity to use or disclose the Confidential Information for any purpose other than those expressly authorized by the Contract; and
3. Disclose such Confidential Information only to those of its Affiliates who require knowledge of the same for the purpose described in the Contract; provided such Affiliates are obligated to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of the Contract; and
4. Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Affiliates a copy of the terms of the Contract and any other Non-Disclosure Agreement the State may provide for said Affiliates signature. Such restrictions will be at least as stringent as those applied by the Vendor's own most valuable confidential and proprietary information and as required by the Contract.
5. The acts or omissions of Vendor's Affiliates with respect to the Confidential Information shall be deemed to be acts or omissions of the Vendor.

E. Additional Requirements

1. Vendor will not remove, obscure or alter any confidentiality or trade secret notation from the Confidential Information without the State's prior written authorization.
2. Confidential Information will remain the exclusive property of the State unless as otherwise provided for in any agreement and/or the Contract between the State and Vendor; upon completion of the project and/or services, or whenever requested by the State, Vendor will promptly destroy or return to the State, in a form acceptable to the State, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the State in writing.
3. Vendor agrees that the breach of these terms would cause irreparable damage to the State. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the State harmless from actual damages from losses that result from its breach, including, but not limited to, reasonable attorneys' fees and related litigation expenses. Also, the State has the right to seek an order to restrain the Vendor and its agents, Affiliates, etc. from breaching these terms or otherwise commence any action in law or in equity.

### **13.18 Taxes**

- A. The State and its agencies are exempt from payment of any tax imposed directly on the purchaser of goods and services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, R.I. Gen. Laws § 31-36-1, *et seq.* Except for the Rhode Island Motor Fuel Tax, federal, state and local taxes should not be included in the Vendor's bid or proposal price or otherwise invoiced. Exemption Certificates will be furnished upon request. Vendors and their subcontractors performing improvements to real property pursuant to a contract with a State agency may purchase materials specifically allocated for the performance of said Contract from their suppliers provided that:
1. The materials are essential to the project;
  2. The materials are incorporated into the project; and,
  3. The Vendor or its subcontractors provide their suppliers with an exemption certificate.

### **13.19 Insurance/Bonds/Other Security**

- A. Insurance

Prior to issuance of a Contract, Vendor shall submit to the Division proof of insurance coverages as set forth in the General Condition Addendum A (General

Insurance Requirements), other applicable General Condition Addenda and/or as required by the solicitation ("Insurance Requirements"). Vendor shall comply with the minimum Insurance Requirements imposed by the State. If different or additional insurance requirements are set forth in the solicitation, then Vendor shall comply with the insurance requirements specified in the solicitation.

**B. Payment and Performance Bonds**

When required by the solicitation or the General Condition Addenda, the successful Vendor shall furnish a payment and/or performance bond in the amount stated in the solicitation from a surety licensed to conduct business in the State of Rhode Island upon the tentative selection.

**C. Other Security**

The State Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or other comparable forms of security, and/or to require additional or more extensive coverage for any individual procurement. Vendors shall provide certificates of insurance and required endorsements for all insurance requirements of the solicitation in form and terms acceptable to the State Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not "responsible." The State Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the State's interests.

### **13.20 Termination, Default, Cancellation and Stop Work**

**A. Non-Performance or Breach**

A Contract may be rescinded, canceled or terminated by the State Purchasing Agent, at the Vendor's expense upon non-performance or breach by the Vendor of any of its obligations. Failure of a Vendor to cure such non-performance or breach within ten (10) business days after the receipt of notice, unless otherwise determined by the State Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing State contracts and or subcontracts to which the Vendor is a party, and/or the suspension or debarment of the Vendor from participating in future procurements. The State may pursue any and all of its rights and remedies at law or in equity against the defaulting Vendor or its surety.

**B. Timeliness**

Failure of a Vendor to deliver the required goods or perform services within the time specified and in accordance with the applicable standards of professional skill and care, or within reasonable time as interpreted by the State Purchasing Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the State Purchasing Agent, may cause

the State Purchasing Agent to purchase in the open market to replace those goods or services rejected or not delivered. The State Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any Contract when necessary. On all such purchases, the Vendor, and/or its surety, agrees to promptly reimburse the State for excess costs occasioned by the Vendor's default. Should the replacement cost be less, the Vendor shall have no claim for the difference. Vendor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service may be considered to be in default of Contract. The State Purchasing Agent may contract for completion of the work with another Vendor and seek reimbursement of all costs and expenses from the defaulting Vendor and/or its surety and pursue all rights and remedies at law or in equity.

C. Availability of Funds.

Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds by the General Assembly and/or the Federal Government. If any Contract is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds. If the term of extends into fiscal years subsequent, continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected goods not yet delivered, terminate any services supplied to the State, and relieve the State of any further obligation thereof. State shall remit payment for goods and services accepted prior to the date of termination in the notice.

D. Convenience

1. For subscription services the State may terminate for convenience.
2. For all other Contracts, the State Purchasing Agent shall have the right to terminate the Contract for convenience if the State Purchasing Agent determines in writing that termination is in the State's best interest. The Vendor shall be paid for work completed and accepted, but Vendor shall not be entitled to recover lost profits.

E. Stop Work

In the interests of health, safety and welfare, economic or otherwise, the State Purchasing Agent may issue a stop work order to a Vendor on any Contract for a reasonable period of time. The Vendor shall cease and desist any further work until so ordered by the State Purchasing Agent. In the event that the Vendor bears responsibility for the conditions requiring a stop work order, the State shall not be responsible for any delays.

## **13.21 Indemnification**

### **A. General**

Vendor shall defend, indemnify, release and hold harmless the State and its agencies, together with their respective officers, agents and employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys' fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor's breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, subcontractors or volunteers at any tier.

### **B. Intellectual Property**

Vendor shall defend, indemnify, release and hold harmless the State and its agencies; together with their respective officers, agents and employees, from and against all claims, demands, damages, liabilities, death, injury, judgments and other costs and expenses (including attorneys' fees), arising out of or related to, directly or indirectly, in whole or in part, a claim that a product or service or its use infringes the intellectual property rights of another person or entity.

## **13.22 Vendor Obligations**

A. In addition to the specific requirements imposed by the State in the Contract, a Vendor engaged in providing goods or services to the State shall generally have the following standard responsibilities:

1. Perform services in accordance with applicable standards of professional skill and care or as otherwise provided in the solicitation or Contract. When applicable law requires that services be performed by licensed professionals, Vendor shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.
2. To furnish adequate protection from damage for all work and to repair damage of any kind, for which it or its workmen are responsible, to the building or equipment, to its own work, or to the work of other Vendors.
3. To clear and remove all debris and rubbish resulting from its work from time to time, as directed or required, at completion of the work to leave the premises in a neat, unobstructed condition, broom clean, and in satisfactory order and repair.
4. To store equipment, supplies, and material at the project site only upon approval by the State, and at its own risk.

5. To perform all work so as to cause the least disruption and inconvenience to the State, and with proper consideration for the rights of other Vendors and workers.
6. To acquaint themselves with conditions to be found at the project site, and to assume responsibility for the appropriate dispatching of equipment and supervision of its employees during the conduct of the work.
7. To supervise Vendor employees and subcontractors and to ensure that its employees are instructed with respect to special rules, regulations, policies, and procedures in effect for any State facility or project site, and that its employees comply with such rules, regulations, policies and procedures.
8. To perform background checks of Vendor employees, subcontractors and agents as required by the State.
9. **EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION** - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and R.I. Gen. Laws Chapter 28-5.1. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.
10. **DRUG-FREE WORKPLACE REQUIREMENT** – Vendors who do business with the State and their employees shall abide by the State's drug-free workplace policy. Specifically, Vendor agrees as follows:
  - a. Vendor employees and agents are required to refrain from the abuse of alcohol and/or illegal and/or prescription drugs and must report to work in a fit condition to perform their duties or be subject to disciplinary action by the Vendor.
  - b. All Vendor employees, while on State business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.
  - c. Vendors will take appropriate disciplinary action with all violators of this policy who are currently employed. Vendors will not knowingly consider for employment anyone who is known to currently abuse alcohol and/or illegal and/or prescription drugs.

11. In the best interest of the State, the State Purchasing Agent reserves the right to remove or have a Vendor immediately remove any Vendor employee, subcontractor or agent of the Vendor working on a State Contract based on a good faith belief that the individual is not acting in an appropriate, professional and/or in a commercially reasonable manner.
12. To comply with the provisions of R.I. Gen. Laws § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

### **13.23 Force Majeure**

Neither the State, nor its Vendors, shall be liable to the other for failure or delay in performance due to a cause not reasonably foreseen by, beyond the control of, and without the fault or negligence of the party declaring a force majeure event; provided that the party declaring a force majeure event shall have used its best efforts to avoid such failure or delay in performance, minimized the impact thereof, and given prompt written notice to the other party when first discovered, fully describing its probable effect and duration. In such event of excusable delay or non-performance, the State shall have the right at its option and without liability to cancel by notice to the Vendor any and all portions of Vendor's performance so affected and to take such other action as may be necessary. The State may, after ascertaining the facts and the extent of the delay, extend the time for completing performance when the facts so justify and amend the timetable accordingly. The State shall not be liable for any increased costs, including price escalation, beyond the performance or delivery date, due to a force majeure event. Force majeure shall not include a Vendor's financial distress or the financial distress of Vendor's parent, subsidiary, affiliated or associated company; claims or court orders that restrict Vendor's ability to deliver the goods, products or services contemplated by the Contract; strikes; labor unrest; supply chain disruptions; Vendor's subcontractor's or supplier's financial distress, conduct, negligence or default; or, as otherwise set forth within the Contract and associated documents.

### **13.24 Compliance with Law**

During the term of the Contract with the State, Vendors shall comply with all statutes, laws, regulations, codes, orders, policies, rules and regulations of federal, state or municipal authorities applicable to the furnishing of such goods or services as set forth in the solicitation and the Vendor's bid or proposal all of which are hereby incorporated by reference into any Purchase Order or Purchase Agreement issued by the Division. Vendors shall pay for all required permits, licenses and fees required for the delivery of goods or services to the State unless otherwise stated in the solicitation or Contract.

### **13.25 Subcontracting, Assignment, Merger or Acquisition, Key Personnel, Third-Party Payment, and Prompt Payment of Subcontractors**

#### **A. Subcontracting**

Vendors shall not subcontract with any third-party, except as set forth in its bid or proposal, without the prior written consent of the State Purchasing Agent. Such consent, if granted, shall not relieve the Vendor of any of its responsibilities under the Contract, nor shall it create privity of contract between the State and the sub-contractor. If a Vendor uses a sub-contractor to fulfill its responsibilities, then the Vendor shall be responsible for the sub-contractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Provided, however, for Rhode Island Department of Transportation ("RIDOT") road, bridge and heavy construction projects, approval of subcontractors shall be in accordance with "Bluebook" specifications issued by RIDOT. Upon request, contractors must submit to the Division of Purchases a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

#### **B. Assignment**

Vendors shall not, in whole or part, assign, transfer, convey, sublet, delegate or otherwise dispose of a Purchase Order, Purchase Agreement or Contract with the State or its right, title or interest therein, or its power to execute such Contract prior to issuance of a Purchase Order, to any other person, company, corporation, or entity without the written consent of the State Purchasing Agent. If consent is not granted, then the assignment, transfer, conveyance, sublet, delegation, or disposal shall be void ab initio.

#### **C. Merger or Acquisition**

If subsequent to the submission of a bid or proposal and prior to issuance of a Purchase Order or Purchase Agreement, a Vendor merges with or is acquired by another entity, then the Vendor shall provide appropriate and legally binding documentation between the Vendor and the successor entity ratifying acceptance of the Vendor's bid, proposal and any Contract terms, conditions, and pricing submitted to the Division. The State Purchasing Agent may disqualify the Vendor if the successor entity is determined to be not responsible.

#### **D. If, after issuance of a Purchase Order, there is a material acquisition or change of ownership of a Vendor or its parent to another entity or person, the State Purchasing Agent may either authorize assignment of the Purchase Order or Purchase Agreement to the successor entity or cancel the Purchase Order or Purchase Agreement.**

E. Key Personnel

If the Vendor's bid or proposal identified key personnel who would be responsible for fulfillment of the Vendor's performance obligations and said key personnel are for any reason no longer available, then the State Purchasing Agent may either authorize substitution of said key personnel by the Vendor or cancel the Contract.

F. Third-Party Payment

Unless expressly provided for in the solicitation, the State will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the State Purchasing Agent. If a Vendor's bid or proposal is contingent upon such payment(s), then it must be clearly stated within the bid or proposal and is subject to approval by the State Purchasing Agent.

G. Prompt Payment of Subcontractors

In accordance with R.I. Gen. Laws § 42-11.1-3(b) Vendors shall make prompt payment for satisfactory subcontract work for which the State has made partial or full payment. The State reserves the right to determine whether a Vendor, who repeatedly fails to make prompt payment to subcontractors, is Responsible relative to future procurements, and may suspend, debar or otherwise remove such Vendors from the State Bidders List.

### **13.26 Advertising**

Vendors shall not reference a State Contract for the purposes of advertising or promotion without written authorization from the State Purchasing Agent and any agency owner of the referenced Contract.

### **13.27 Non-Exclusive Rights**

The State reserves the right to issue multiple solicitations for goods or services similar or identical to the goods or services described in a solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

### **13.28 Election of Remedies**

All rights exercisable by and remedies of the State shall be cumulative. The exercise or beginning of the exercise by the State of any of its rights and remedies will not preclude the State from exercising any other right hereunder or otherwise granted by law or in equity.

### **13.29 Survival**

All Vendor obligations herein shall survive expiration, termination and/or cancellation of the Contract.

### **13.30 Contract Transition**

Vendor agrees to act in good faith and a commercially reasonable manner at all times in the transition of a Contract to a new Vendor.

### **13.31 Governing Law, Forum**

- A. The construction and effect of any solicitation, Contract or Purchase Order documents, Purchase Agreement or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq.* shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise.
- B. After exhaustion of any administrative remedies, any suit, action or proceeding brought by a Vendor in connection with any solicitation, Contract, or Purchase Order or actions by the Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq.* shall be brought solely in the Providence Superior Court, Providence, Rhode Island. Vendors irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.

### **13.32 Effective Date and Commencement of Work**

- A. Effective Date of the General Conditions

The General Conditions shall apply to all procurements issued after the effective date of these regulations.

- B. Contract Effective Date

The effective date of any procurement shall be the date contained in the Contract. No work or services shall commence prior to the issuance of a Purchase Order or written authority to proceed formally issued by the Division. Any work performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the State.

### **13.33 Amendments to General Conditions**

The State Purchasing Agent reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the State and/or protect the health, safety or welfare, economic or otherwise, of the State and its citizens.

### **13.34 Contract Addendums in Addition to the General Conditions of Purchase**

- A. In addition to the General Conditions of Purchase, the additional contract Addenda ("GC Addenda") listed below shall apply to specific types/categories of Contracts with the State at the direction of the Division. The Division shall indicate any applicable GC Addenda in the solicitation or other procurement. These GC Addenda shall be considered as additional Contract terms and conditions with the State.
- B. The GC Addenda may be amended from time to time without Administrative Procedures Act promulgation and at the discretion of the Division. The GC Addenda shall be considered contract terms and not regulations.
- C. The Division may post the current GC Addenda on the Division's website for reference purposes and/or may include with the solicitation. The GC Addenda includes the following:
  - 1. GC Addendum A – General Insurance Requirements
  - 2. GC Addendum B – Information Technology Requirements
  - 3. GC Addendum C – Public Works Project Requirements (AIA Agreements)
  - 4. GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners.
  - 5. GC Addendum E – Standard Business Associates Agreement Requirements
  - 6. GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above.
- D. The Division reserves the right to add GC Addenda as necessary without further promulgation of regulation. Again, any additional GC Addenda would be considered a Contract term.
- E. In lieu or in addition to any GC Addenda, the Division reserves the right to include any contract terms in a specific solicitation or procurement as necessary.

### **13.35 Severability**

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

220-RICR-30-00-13

**TITLE 220 - DEPARTMENT OF ADMINISTRATION**

**CHAPTER 30 - PURCHASES**

**SUBCHAPTER 00 - N/A**

PART 13 - GENERAL CONDITIONS OF PURCHASE (220-RICR-30-00-13)

Type of Filing: Adoption

**Agency Signature**

E-SIGNED by Michael DiBiase

December 11, 2018

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Agency Head Signature

Agency Signing Date

**Department of State**

01/01/2019

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Regulation Effective Date

K.C.

December 12, 2018

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Department of State Initials

Department of State Date