

**STATE OF NEBRASKA CONTRACT AWARD**

State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
Fax: (402) 471-2089

**CONTRACT NUMBER**  
**15354 OC**

PAGE 1 of 1	ORDER DATE 03/30/23
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 2359087	
VENDOR ADDRESS:  CLARK EQUIPMENT COMPANY DBA BOBCAT COMPANY 250 E BEATON DR WEST FARGO ND 58078-2656	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

**FEBRUARY 28, 2023 THROUGH FEBRUARY 27, 2024**

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from NASPO Contract #: CTR006029 (Formerly E194-81037-CAT)

Contract to supply and deliver GROUNDS MAINTENANCE EQUIPMENT to State of Nebraska agencies and political sub-divisions for the period of February 28, 2023 through February 27, 2024 with the option to renew for One (1) additional one (1) year period per the terms, conditions and specifications of the of the Contract CTR006029 (Formerly E194-81037-CAT).

The NASPO ValuePoint Contract can be found at <https://www.naspovaluepoint.org>

Payment Terms: Net 45

Vendor Contact: Jesse Rheault, Government Account Manager  
Phone: 701-241-8759  
Cell: 701-630-5134  
Email: Jesse.Rheault@Doosan.com

Vendor Contact: Randy Fuss, Director of Government Accounts  
Phone: 701-241-8746  
Cell: 701-371-4263  
Email: Randy.Fuss@Doosan.com

This is the First Renewal of the Participating Addendum as Amended (BT 03/30/23)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	GROUND MAINTENANCE EQUIPMENT	100,000.0000	\$	1.0000

DocuSigned by:  
*CHRISTINA KELLY*  
A7DD6E449BA2410...  
BUYER

DS  
*JD*

DocuSigned by:  
*Amara Block*  
4CFF2711162A4A2...  
MATERIAL ADMINISTRATOR

**PARTICIPATING ADDENDUM  
AMENDMENT ONE (1)  
(Hereinafter “Amendment”)**

**Naspo ValuePoint Master Agreement #: E194-81037**

**GROUNDS MAINTENANCE EQUIPMENT**

Administered by the Commonwealth of Virginia (hereinafter “Lead State”)  
**MASTER AGREEMENT**

**Clark Equipment Company dba Bobcat Company & Doosan Infracore**  
(Hereinafter “Contractor”)

**and**

**State of Nebraska**  
(Hereinafter “Participating State/Entity”)

**THIS AMENDMENT** is by and between the State of Nebraska (“Participating State/Entity”) and Clark Equipment Company (Contractor).

**WHEREAS** the Lead State the Commonwealth of Virginia has a Contract with the Contractor identified as Master Agreement Number E194-81037 to provide Grounds Maintenance Equipment for use by State Agencies and other entities. The State has entered into a Participating Addendum/Contract with the Contractor, identified as **15354 OC**.

**WHEREAS** the terms of the Contract specifically state that the Contract may be amended per agreement by both parties. The State of Nebraska wishes to continue to take advantage of existing contract.

**NOW, THEREFORE**, it is agreed by the parties to amend the Contract as follows:

Effective Upon Execution by both Parties:

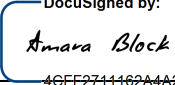
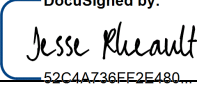
- 1. CHANGES:** The purpose of this Amendment One (1) is as follows:
  - a.** Both parties hereby agree to renew the Contract/Master Agreement Number E194-81037 for an additional One (1) year period, beginning February 28, 2023, through February 27, 2024, with One (1) renewal option remaining.
  - b.** Due to the new Commonwealth of Virginia e-procurement system, the Contract/Master Agreement Number E194-81037 has changed from E194-81037 to CTR006029.
  - c.** “Changes to General Term and Condition” General Term and Condition “Default” has been changed to read: **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract and procure all goods and/or services contracted for, from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

**PARTICIPATING ADDENDUM  
AMENDMENT ONE (1)  
(Hereinafter "Amendment")**

**Naspo ValuePoint Master Agreement #: CTR006030 (formerly E194-81037)**

Terms and Conditions inconsistent with, contrary, or in addition to the Terms and Conditions of this Participating Addendum Amendment and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum Amendment or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise. Any such attempts to add or incorporate such Terms and Conditions are hereby rejected. The Terms and Conditions of this Participating Addendum Amendment, the Price Agreement, and its exhibits, shall prevail and govern in the case of any such inconsistent or additional terms. This Participating Addendum Amendment applies only in the jurisdiction of the Participating State or Participating Entity, which has executed this Participating Addendum Amendment.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum Amendment as of the date of execution by both parties:

Participating State: Nebraska	Contractor: Bobcat Company
Signature:  <small>DocuSigned by: Amara Block 4GFF2711162A4A2...</small>	Signature:  <small>DocuSigned by: Jesse Rheault 52C4A736EE2E480...</small>
Printed Name: Amara Block	Printed Name: Jesse Rheault
Title: Chief Procurement Officer	Title: Government Account Manager
Date: 3/31/2023	Date: 3/23/2023



COMMONWEALTH OF VIRGINIA  
DIVISION OF PURCHASES & SUPPLY (DPS)  
1111 East Broad Street, Richmond, Virginia 23219

**MODIFICATION #3  
TO  
CONTRACT NUMBER CTR006029  
FORMERLY CONTRACT NUMBER E194-81037  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
BOBCAT COMPANY**

This MODIFICATION #3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and Bobcat Company, a North Dakota corporation, hereinafter referred to as the "Contractor" or "Bobcat" relating to the modification of Contract E194-81037 effective February 28, 2020 as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification is hereby incorporated into and made an integral part of the Agreement.

The purpose of this modification is to document both parties' agreement A.) Renew the Contract and B.) Update the Contract number, C.) Update "Default" General Term and Condition. All changes are effective upon full execution of this document, unless otherwise noted, and shall be included in any subsequent modifications.

**A. Reference:** Contract E194-81037, "Renewal of Contract."

Both parties hereby agree to renew the Contract for an additional one (1) year period, beginning February 28, 2023 through February 27, 2024 with one (1) renewal options remaining.

**B. Reference:** Contract E194-81037, "Changes to the Contract."

Due to the new Commonwealth of Virginia e-procurement system, the contract number has changed from E194-81037 to CTR006029.

**C. Reference:** Contract E194-81037, "Changes to General Term and Condition" General Term and Condition "*Default*" has been changed to read: *DEFAULT*: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may terminate this contract and procure all goods and/or services contracted for, from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-81037 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

(SIGNATURE PAGE TO FOLLOW)

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

**BOBCAT COMPANY**

BY: Jesse R. Rheault

NAME: Jesse R Rheault  
Printed Name

TITLE: Government Account Manager

DATE: 1/2/2023

**COMMONWEALTH OF VIRGINIA**

BY: Tracy Wrenn, VCO

NAME: Tracy Wrenn  
Printed Name

TITLE: Statewide Sourcing and Contracting Officer

DATE: 1/23/2023

# STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, Nebraska 68508

Telephone: (402) 471-6500  
Fax: (402) 471-2089

**CONTRACT NUMBER**  
**15354 OC**

PAGE 1 of 1	ORDER DATE 09/04/20
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 2359087	
VENDOR ADDRESS:  CLARK EQUIPMENT COMPANY DBA BOBCAT COMPANY & DOOSAN INFRACORE CONSTRUCTION EQUIPMENT AMERICAS 250 E BEATON DR WEST FARGO ND 58078-2656	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

**SEPTEMBER 11, 2020 THROUGH FEBRUARY 27, 2023**

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from NASPO Contract #: E194-81037-CAT

Contract to supply and deliver GROUNDS MAINTENANCE EQUIPMENT to State of Nebraska agencies and political sub-divisions for the period of September 11, 2020 through February 27, 2023 with the option to renew for Two (2) additional one (1) year period per the terms, conditions and specifications of the of the Contract E194-81037-CAT.

The NASPO ValuePoint Contract can be found at <https://www.naspovaluepoint.org>

Payment Terms: Net 45

Vendor Contact: Jesse Rheault, Government Account Manager  
Phone: 701-241-8759  
Cell: 701-630-5134  
Email: [Jesse.Rheault@Doosan.com](mailto:Jesse.Rheault@Doosan.com)

Vendor Contact: Randy Fuss, Director of Government Accounts  
Phone: 701-241-8746  
Cell: 701-371-4263  
Email: [Randy.Fuss@Doosan.com](mailto:Randy.Fuss@Doosan.com)

(MH 08/17/20)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	GROUND MAINTENANCE EQUIPMENT	100,000.0000	\$	1.0000

*Christina L. Kelly* 09.09.20  
*[Signature]*  
BUYER  
MATERIEL ADMINISTRATOR

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## Ground Maintenance Equipment

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### Contract Summary:

This is a Statewide Contract in participation with NASPO ValuePoint Cooperative Contract for the purchase of **GROUND MAINTENANCE EQUIPMENT**.

Bobcat® has more than 60 years of dedication to compact equipment, and industry leadership that extends across the entire industry. Our innovations work, because they are made for work. From its attachments to its manufacturing techniques to the technologies built into the machine, Bobcat provides more ways for you to tackle your job. If you need compact equipment, you can get it from Bobcat.

The Bobcat Company complete catalog is available via the “E194-81037 NASPO ValuePoint Master Agreement” which includes Tractors, Utility Vehicles, Small Articulated Loaders, Toolcat™ Utility Work Machines, and Mini Track Loaders as well as Steiner® Tractors.

### Contract Manager:

Christie Kelly, Procurement Contracts Officer  
402-471-6500  
[christina.kelly@nebraska.gov](mailto:christina.kelly@nebraska.gov)

### Ordering Instructions:

1. **Request a Quote:** Bobcat Company believes in the importance of local relationships. Visit <https://www.bobcat.com/dealer> to identify your local Dealership. You can also contact Bobcat Company directly by calling (701) 241-8719 or emailing [bobcatgovquotes@doosan.com](mailto:bobcatgovquotes@doosan.com).
2. **Purchase Orders:** Bobcat Company promotes simple and efficient business. You can engage directly with your local Dealership or contact one of the Dealerships listed above.
  - a. When placing a Purchase Order make sure to do the following:
    - i. Include the Bobcat Company/Dealership Quote Number on the Purchase Order (Purchase orders can be issued either to the Dealerships or to Bobcat Company);
    - ii. Include the Nebraska contract number 15354 OC or language citing the Nebraska contract, for example: “Quoted in accordance with the Nebraska contract 15354 OC”; and,
    - iii. Contact the Dealership/Bobcat Company to make sure the Nebraska contract 15354 OC based price has been applied.
3. **Additional Ways To Procure:** There are several methods to issue an order. These methods can be employed when working with either a Dealership or directly with Bobcat Company:
  - a. Signed Quote – at the bottom of each quote will be a contract citation along with a signature block.
  - b. Credit Card – Credit cards may be available for use at certain locations or for certain items.
  - c. Other - Bobcat Company will work with any customer seeking alternative methods.

Prior to completing a transaction verify the Quote contains language citing the Nebraska contract, for example: “Quoted in accordance with the Nebraska contract 15354 OC”; and Contact the Dealership/Bobcat Company to make sure the Nebraska contract 15354 OC based price has been applied.

**\*\*\*State of Nebraska Political Subdivisions, other States, Agencies or Divisions of Other States, or Political Subdivisions of other States, if applicable, must submit Tax Exempt certificates with each Purchase Order/Procurement Method.\*\*\***

4. **Online Accounts:** Please visit <https://www.bobcat.com/> to begin exploring Bobcat Company's vast catalog. Accounts are not required; however, you can stay connected with Bobcat with via email by signing up here: <https://www.bobcat.com/secure/forms/email-subscription>.
5. **List of Dealerships:** Please visit <https://www.bobcat.com/dealer> to identify your closest Bobcat Dealership.
6. **Payments:** Customers will receive an invoice with payment instructions to include remittance information. Payment instructions may differ based upon who received the order.

## Vendor Contact Information:

Quoting and Ordering	
Name	Heather Messmer
Title	Government Sales Support Manager
Phone	701-241-8719
Email	<a href="mailto:Heather.Messmer@Doosan.com">Heather.Messmer@Doosan.com</a>

Quoting, Ordering and Administration	
Name	Jesse Rheault
Title	Government Account Manager
Phone	701-241-8759
Cell	701-630-5134
Email	<a href="mailto:Jesse.Rheault@Doosan.com">Jesse.Rheault@Doosan.com</a>

Alternate POC and Oversight	
Name	Randy Fuss
Title	Director of Government Accounts
Phone	701-241-8746
Cell	701-371-4263
Email	<a href="mailto:Randy.Fuss@Doosan.com">Randy.Fuss@Doosan.com</a>

NE State Purchasing Bureau | 1526 K Street, Suite 130 | Lincoln, NE 68508 | 402- 471- 6500 [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)





**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**

*Led by the Commonwealth of Virginia*

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**Master Agreement #: E194-81037**

**Contractor: Bobcat Company**

**Participating Entity: State of Nebraska**

**State of Nebraska Contract #: 15354 OC**

The Contractor shall provide Ground Maintenance Equipment to the Participating Entity as set forth in the Master Agreement for the following category:

- Category 1: Tractors (heavy duty and compact)
- Category 3: Off Road Utility Vehicles

The following categories of products or services are not included in this agreement:

- Category 2: Tractor Towed PTO (Gang Mowers and Single Unit Mowers)
- Category 4: Self Propelled Riding Mowers (Medium Duty Wide Coverage and Zero Turn)
- Category 5: Turf Maintenance (Towed and Ground Driven)

**Master Agreement Terms and Conditions:**

1. **Scope:** The Terms and Conditions of the Contractor's NASPO ValuePoint Master Agreement for **Ground Maintenance Equipment (2020-2025)** led by the Commonwealth of Virginia, remain in full force and effect. This Contract to the Contractor's Master Agreement allows the addition of specific Terms and Conditions required by the Participating Entity.
2. **Participation:** This Contract, as authorized by the Participating Entity's State statutes to utilize the Master Agreement with the prior approval of the State's Chief Procurement Official, may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the Participating Entity's State. Issues of interpretation and eligibility for participation are solely within the authority of that State's Chief Procurement Official.
3. **Term:** The initial term of the Master Agreement shall be for three (3) years and is effective from **February 28, 2020 through February 27, 2023**, with two (2) optional additional one (1)-year renewals. The term of this Contract will coincide with the Master Agreement's term in its entirety, including any renewals or extensions.
4. **Pricing:** Any products and/or services ordered under this Contract shall include the Contractor's Master Agreement negotiated percentage discount off the products and/or services available on the Contractor's current price catalog/list (MSRP/MPL).
5. **Warranty:** All products furnished by the Contractor under this Contract shall be covered by all commercial warranties the Contractor provides for such products under the Master Agreement.
6. **Primary Contacts:** The primary contact individuals (or their named successors) for this Contract are as follows:

**Contractor:**

Name:	Jesse Rheault
Title:	Government Account Manager
Address:	250 East Beaton Dr.
Telephone:	701-630-5134
Email:	Jesse.rheault@doosan.com



**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**  
*Led by the Commonwealth of Virginia*

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**Participating Entity:**

Name:	Christie Kelly
Title:	Buyer III
Address:	1526 K Street, Suite 130
Telephone:	402-471-6500
Email:	<a href="mailto:christina.kelly@nebraska.gov">christina.kelly@nebraska.gov</a>

7. **Participating Entity Additions to the Master Agreement:** These additions apply only to actions and relationships within this Contract:
- [X] The following Terms and Conditions are added to the Contractor's Master Agreement:
8. **Leasing and Financing:** Procurement and other applicable laws of some Participating Entities may permit the use of leasing or alternative financing methods for the acquisition of products under the Master Agreement. The Terms and Conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and the Participating Entity. When leasing or using alternative financing methods for this Contract, the Participating Entity is to follow the policy and guidelines outlined by their purchasing authority or state regulations, statutes, or any other applicable laws.
9. **Subcontractors:** All dealers, resellers, or other subcontractors authorized by the Contractor, as shown on the NASPO ValuePoint website, are approved to provide sales and service support under the Master Agreement. The Contractor's use of subcontractors will be in accordance with the Terms and Conditions set forth in the Master Agreement.
10. **Orders:** Any order placed by a Participating Entity for a product and/or service available from the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**  
*Led by the Commonwealth of Virginia*

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.02, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful Contractor's proposal or response will be posted to a public website managed by DAS, which can be found at:

<https://statecontracts.nebraska.gov>

**I. TERMS AND CONDITIONS**

Contractor may, if necessary, reject and provide alternative language for each clause. The Contractor should also provide an explanation of why the Contractor rejected the clause or rejected the clause and provided alternate language using "Track Changes". The State reserves the right to negotiate rejected or proposed alternative language. If the State and Contractor fail to agree on the final Terms and Conditions, the State reserves the right to not participate on the cooperative contract.

The Contractor should submit any license, user agreement, service level agreement, or similar documents that the Contractor wants incorporated into the Contract. The Contractor must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted prior to signing the Contract. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the addendums have been negotiated and agreed to, the addendums shall be interpreted as follows:

1. If only one (1) Party's document has a particular clause then that clause shall control;
2. If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

The Contract shall incorporate the following documents:

1. Participating Addendum; and
2. Master Agreement E194-82037

These documents constitute the entirety of the Contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document; 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority; 2) executed Contract and any attached Addenda; 3) Participating Addendum; and, 4) the MasterAgreement E194-82037;.

Any ambiguity or conflict in the Contract discovered after execution, not otherwise addressed herein, shall be resolved in accordance with the rules of Contract interpretation as established by the State of Nebraska.

**B. NOTIFICATION**

Contractor and State shall identify the Contract manager who shall serve as the point of contact for the executed Contract.

Communications regarding the executed Contract shall be in writing and shall be deemed to have been given if delivered personally, via email or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change and setting forth the new address and an effective date.



**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**

*Led by the Commonwealth of Virginia*

**C. GOVERNING LAW (STATUTORY)**

Notwithstanding any other provision of this Contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that:

1. The State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation;
2. This contract will be interpreted and enforced under the laws of the State of Nebraska;
3. Any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law;
4. The person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations;
5. The indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and,
6. All Terms and Conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**D. INDEMNIFICATION**

The State agrees to defend, indemnify, and hold harmless the Contractor and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the Contractor for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the State, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such State liability is attenuated by any action of the Contractor which directly and proximately contributed to the claims.

**E. LIMITATION OF LIABILITY**

Only to the extent permitted by law, in no event will either party have any liability to the other party for any liquidated, indirect, consequential, exemplary or incidental damages (including, but not limited to, damages for loss of business profits, business interruption, and loss of business information) arising out of this agreement, however caused, whether in contract, tort or under any other theory of liability, and whether or not such party has been advised of the possibility of such damages and notwithstanding any failure of the essential purpose of this agreement or any limited remedy hereunder. This section does not apply to claims for indemnification under section 1d. **THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**F. SEVERABILITY**

If any term or condition of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining Terms and Conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the provision held to be invalid or illegal.

**G. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE**

The Contractor shall allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this Contract. The terms and conditions, including price, of the Contract may not be amended.

The Contractor shall allow political subdivisions to use this Contract. The terms and conditions, including price, of this Contract shall apply. The State of Nebraska shall not be contractually or otherwise obligated or liable under any Contract entered into pursuant to this clause.

**H. EARLY TERMINATION**

The Contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the Contract at any time.



**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**  
*Led by the Commonwealth of Virginia*

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2. The State, at its sole discretion, may terminate the Contract for any reason upon 30-calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the Contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the Contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the Contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.
4. Either Party may terminate the Participating Addendum, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar days cure period. Said notice shall be delivered by Registered or Certified Mail, Return Receipt Requested, or in person with proof of delivery.





**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**

*Led by the Commonwealth of Virginia*

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**II. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

It is agreed that the Contractor is an independent Contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, State of Nebraska, or a partnership.

The Contractor is solely responsible for fulfilling the Contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the Contract. The personnel the Contractor uses to fulfill the Contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's bid shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a Subcontractor to fulfill the terms of the Contract shall remain under the sole direction and control of the Contractor or the Subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the Contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or Subcontractors or sub Contractor's employees).

If the Contractor intends to utilize any Subcontractor, the Subcontractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the Contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the Terms and Conditions contained in any Contract with a Subcontractor does not conflict with the Terms and Conditions of this Contract.

The Contractor shall include a similar provision, for the protection of the State, in the Contract with any Subcontractor engaged to perform work on this Contract.

**B. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All Contractors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Supplier who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within 90 calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available on the DAS website at: <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the Contract.

**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**

*Led by the Commonwealth of Virginia*

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**C. EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal State of Nebraska authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>

The completed United States Attestation Form should be submitted with the Contract.

2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the Contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

**D. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Sub Contractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of Contract. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any Contract resulting from this ITB.

**E. COOPERATION WITH OTHER CONTRACTORS**

Contractor may be required to work with or in close proximity to other Contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other Contractors or individuals, and shall not commit or permit any act, which may interfere with the performance of work by any other Contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this Contract.

**F. PERMITS, REGULATIONS, LAWS**

The Contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the Contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the Contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this Contract.

**G. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

Upon the prior written approval of Contractor and to the extent permitted by law, the State shall have the unlimited right to publish, duplicate, use, and disclose all information and data obtained from a third party or developed by the Contractor on behalf of the State pursuant to this Contract. Such written approval shall not be unreasonably withheld. The Contractor acknowledges and understands that the State is subject to public records laws and that disclosure may be required by law.

The State shall own and hold exclusive title to any deliverable developed as a result of this Contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**  
*Led by the Commonwealth of Virginia*

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**H. CONFLICT OF INTEREST**

By submitting a bid, Contractor certifies that there does not now exist a relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this ITB or project.

The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the delivery of its goods hereunder or which creates an actual or an appearance of conflict of interest.

The Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

The Parties shall not knowingly, for a period of two (2) years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the ITB or project, or who had any influence on decisions affecting the ITB or project.

**I. STATE PROPERTY**

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**J. SITE RULES AND REGULATIONS**

The Contractor shall use its best efforts to ensure that its employees, agents, and SubContractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**K. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**L. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods as specified under the specifications in the contract in the event of a disaster.

**M. DRUG POLICY**

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**N. FORCE MAJEURE**

Neither Party shall be liable for any delays in the performance of any of its obligations hereunder due to causes beyond its reasonable control, including, without limitation, fire, strike, war, riots, acts of any civil or military authority, acts of God, epidemics or pandemics, judicial action, unavailability or shortages of labor, materials or equipment, failure or delays in delivery of Vendors and suppliers, or delays in transportation, provided that written notice of such delay (including, but not limited to, the anticipated duration of the delay) will be given by the Party that is experiencing the force majeure as soon as possible after the event or occurrence (but in no event more than 10 days thereafter). The Party experiencing the Force Majeure event will, within 30 days of the event or occurrence, provide adequate assurances to the other Party that the delay will not exceed 60 days. If the delay lasts more than 60 days, the other Party may immediately terminate the Agreement without liability to the Party experiencing the Force Majeure.





**GROUND MAINTENANCE  
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*Led by the Commonwealth of Virginia*

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**III. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Invoices for payments must be submitted by the Contractor to the State of Nebraska requesting the services with sufficient detail to support payment. The Terms and Conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the Contractor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.

**E. PAYMENT (Statutory)**

State will render payment to Contractor when the Terms and Conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section § 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. QUARTERLY UTILIZATION REPORTS**

The Contractor shall provide, to the State of Nebraska, Quarterly Utilization Reports.

The Quarterly Utilization Reports shall be in EXCEL format and sent via email to:

<http://das.nebraska.gov/materiel/purchasing.html>

**The Quarterly Utilization Reports shall provide, at a minimum, the following information pertaining to State of Nebraska's Utilization:**

1. Contractor Name;
2. Nebraska Contract number 15354 OC;
3. Purchase order number;
4. Description; Quantity;
5. Price; and,
6. Agency Name.



**GROUND MAINTENANCE  
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The Quarterly Utilization Report Due Dates are as follows:

<u>Period End Dates</u>	<u>Report Due Dates</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

**G. QUARTERLY ADMINISTRATIVE FEE(S) / REBATE(S)**

Quarterly Administration Fee(s) / Rebate(s) will be made payable to the State of Nebraska in the amount one quarter of one percent (.25%) of the net sales (net of any returns, credits, or adjustments under this Addendum).

The Contractor's NASPO-ValuePoint pricing to the State shall not be adjusted to offset the Quarterly Administrative Fee(s) / Rebate(s).

The Contractor agrees to provide Quarterly Administrative Fee(s) / Rebates(s) in the form of a check by the following Due Dates:

<u>Period End Due Dates</u>	<u>Fee(s) / Rebate(s) Due Dates</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

**H. QUARTERLY ADMINISTRATIVE FEE(S) / REBATE(S) REMITTANCE LOCATION**

All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau  
c/o Central Finance, Administrative Services  
1526 K Street, Suite 240  
Lincoln, NE 68508

**I. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible State of Nebraska interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

**J. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)**

The State's obligation to pay amounts due on the Contract for a fiscal year following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

**K. RIGHT TO AUDIT (Statutory)**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. § 84-304 et seq.) The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the information available to the State at Contractor's place of business or a location acceptable to both Parties during

NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**GROUND MAINTENANCE  
EQUIPMENT (2020-2025)**

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normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

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

Participating Entity: <u>State of Nebraska</u>	<b>Bobcat Company</b>
Signature: 	Signature: 
Name: <u>Doug Carlson</u>	Name: <u>Jesse Rheault</u>
Title: <u>DAS Division Administrator</u>	Title: <u>Government Account Mgr.</u>
Date: <u>9/10/2020</u>	Date: <u>8/19/2020</u>

**PLEASE NOTE:** Fully executed Contracts must be submitted, via email in pdf format, to NASPO ValuePoint at: [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org)

For questions regarding NASPO ValuePoint Contracts, please contact the NASPO ValuePoint Cooperative Contract Coordinators Team at: [ccc@naspovaluepoint.org](mailto:ccc@naspovaluepoint.org)

## COMMONWEALTH OF VIRGINIA – NASPO VALUEPOINT MASTER AGREEMENT

Master Agreement Number: E194-81037

THIS MASTER AGREEMENT entered into this 13 day of February 2020, by Bobcat Company, hereinafter called the “Contractor” and Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply called the “Purchasing Agency.”

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

GENERAL PURPOSE: The Contractor shall provide Ground Maintenance Equipment to the Purchasing Agency as set forth in this Master Agreement for the following Categories:

Category 1 – Tractors

Category 3 – Off Road Utility Vehicles

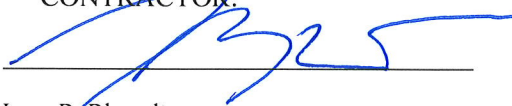
PERIOD OF PERFORMANCE: The initial term of this Master Agreement shall be for three years and is effective from February 28, 2020 through February 27, 2023, with two additional one-year renewal options.

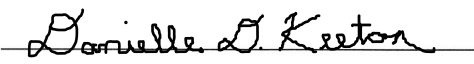
THIS MASTER AGREEMENT hereby consists of the following:

- (1) This signed document;
- (2) Attachment A: Scope of Work;
- (3) Attachment B: NASPO ValuePoint Master Terms and Conditions;
- (4) Attachment C: Commonwealth of Virginia General Terms and Conditions; and
- (5) The following documents incorporated by reference:
  - (a) Request for Proposal #377, including all exhibits and addendums, and
  - (b) The Contractor’s Proposal, including all clarifications and negotiations, to Request for Proposal #377.

In the event of any conflict, Attachment B will take precedence over all other documents.

IN WITNESS WHEREOF, the parties have caused this Master Agreement to be duly executed intending to be bound thereby.

CONTRACTOR:  
By:   
Title: Jesse R. Rheault  
Bobcat Company - Government Account Manager

PURCHASING AGENCY:  
By:   
Title: Statewide Sourcing and Contracting Officer

**Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.**

## **ATTACHMENT A SCOPE OF WORK**

This Scope of Work reflects the Statement of Needs from Request for Proposal (RFP) #377 and any changes identified in Addendums 1, 2, and 3 of the RFP. The specific Categories awarded to the Contractor are listed on the signature page of this Master Agreement.

### **SCOPE OF WORK:**

#### **A. GENERAL REQUIREMENTS**

The Contractor shall provide new equipment and warranty work with replacement parts, therefore a dealer network is required for complete coverage of all states and territories of the United States.

The Contractor shall provide a complete listing of all dealers/distributors within the U.S. and U.S. Territories. Participating States will have an opportunity to have a listing of the dealers/distributors located within their State included in their Participating Addendum.

#### **B. EQUIPMENT**

1. Equipment offered under the Contract shall be new and current models with the exception of any products offered on a Contractor's Hot List. All equipment shall comply with any current applicable safety or regulatory standards or codes.
2. Contractor may request to delete products as needed and add new products as soon as they are available to dealers/distributors so there is no delay in products being readily available to Authorized Users. All requests must be approved by the Contracting Officer.
3. Contractor must immediately notify Authorized User when they order an obsolete or out of stock product and of any equivalent substitutes. Substitutions are not permitted unless agreed upon in writing by the Authorized User and must be at the same or increased discount of percentage based on the contract award.
4. Contractor shall provide with equipment, an operations and maintenance manual with wiring diagrams and parts list. The manual may be in electronic format.
5. Grounds Maintenance Equipment is not considered to include the following:
  - a. Heavy construction equipment
  - b. Skid steers or mini-excavators
  - c. Trailers
  - d. Aerial lifts or bucket trucks

6. Non-contract or allied equipment will be permitted to be procured at the same time as contract equipment to allow for the contract equipment to operate within safety guidelines (e.g., federal, state, agency) or to function as needed. The addition of the non-contract or allied equipment will complete or enhance the operation or provide an additional level of safe operation of the contract equipment. Non-contract or allied equipment are considered to be products, implements, attachments, parts, and bundles not manufactured by the Contractor but in some instances branded by the Contractor.

The following are typical examples of these procurements:

- a. Agency purchasing a contracted base model unit wants a service parts package to take care of the first required oil change on the unit.
  - b. Agency needs to purchase a John Deere tractor with an implement for specialty mowing purposes such as a non-contract/Allied "over the guard rail" boom mower.
  - c. Agency needs to purchase a John Deere tractor for roadside mowing with the tractor tires filled with non-contract/Allied fluid as a ballasting agent in order to maintain stability when performing hillside mowing.
  - d. Agency has a requirement for mounted non-contract/Allied lighting packages on equipment for safety and visibility purposes.
7. Non-contract/allied equipment as defined above may be included on a purchase order as long as the equipment is related to and compatible with the contract equipment being purchased. Stand-alone non-contract/allied equipment purchases shall not be permitted.
  8. The price of the non-contract/allied equipment will be negotiated between the Contractor and the Authorized User. Non-contract/allied equipment must be specified on the purchase order as "non-contract" items. Authorized Users must comply with their State's procurement policies and procedures for the purchase of non-contract/allied equipment.
  9. Contractor confirms that to the extent non-contract/allied equipment is included on a purchase order with contract equipment, the Contractor will not void any applicable equipment warranty(ies), provided that the following conditions are met:
    - a. Non-contract/allied equipment is properly mounted or installed by an authorized dealer/distributor or other installer approved by the Contractor;
    - b. Any warranty claim for contract equipment is warrantable under the terms and limitations of the applicable Contractor's product warranty(ies); and
    - c. The Authorized User provides supporting documentation upon request by the Contractor for verification of warranty claim



## **C. CONTRACT PRICING**

Contractor will provide complete catalog current price list contracts to provide for new grounds maintenance equipment to be made available for purchase. The purchase price shall be the OEMs current price book/product list (MSRP/MPL) in effect at the time the order is placed minus the Contractor's negotiated percentage discount. Authorized Users will reference the Contractor's discount table and contact their local authorized dealer/distributor for specific pricing or use another method provided by the Contractor.

At any time throughout the term of the contract, Contractor may submit to the Contracting Officer, Hot List Program Pricing as long as those products are clearly labeled as such. This option must be made available to all Authorized Users.

## **D. WARRANTY**

Contractor agrees that the products furnished under any resulting contract shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded to the Commonwealth of Virginia or Participating States by any other clause of any resulting contract. The Contractor warrants that at the time of delivery, all equipment purchased under any resulting contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this RFP.

All warranty work performed and parts/materials supplied shall meet OEM warranty requirements. Equivalent substitutions must be approved by the Authorized User's contact person prior to installation. Warranty work performed not meeting specifications or found to be defective and shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the authorized user.

All equipment warranties shall start on the date the equipment is accepted by the Authorized User and shall be for the full term as stated in the warranty. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Authorized User requesting the service. The following information shall be provided in order to determine ownership of the equipment:

- Name of Authorized User, if applicable.
- Make, Model, and VIN of equipment
- Control number/Inventory Number of Authorized User

Repairs made that are covered by a warranty shall not be paid for by the Authorized User. The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of any resulting contract shall be employees of the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

Equipment that will remain in the Contractor's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any state owned equipment in the Contractor's possession.

## **E. TRANSPORTATION CHARGES**

### **1. Freight**

Freight is FOB from the OEM to the dealer network locations within the contiguous United States or to the nearest port of embarkation for all Participating Entities outside of the contiguous United States. Orders for less than the minimum order of \$500 will be shipped prepaid and added to the invoice. Contractor shall not add freight charges for partial

shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500. Contractor shall provide delivery costs policy guidelines for your dealers, whether it is a set rate per loaded mile or if the dealer is allowed to set the rate.

### **2. Delivery and Set-Up Fees**

Delivery and set-up fees may be an optional charge from the dealer to the Authorized User and shall be prepaid and added to the invoice. If a delivery fee is charged, it may be by loaded mile based on Google Maps or a dealer set fee. Delivery and set-up fee charges must be annotated on the quote/invoice as a separate line item. Authorized Users reserve the right to pickup equipment at no charge.

All equipment shall be delivered assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Authorized User. Liability for product delivery remains with the Contractor until delivered and accepted. Damaged or non-operational equipment or products may be rejected. If the damage is not detectable or readily apparent at the time of delivery, Contractor must allow equipment to be returned within a reasonable time at no cost to the Authorized User. Authorized Users reserve the right to inspect all equipment upon delivery or within a reasonable time after delivery if inspection could not be performed upon delivery. Contractor must make arrangements for the return of damaged equipment at no cost to the Authorized User.

Delivery shall be made in accordance with instructions on the purchase order from each Authorized User. The Contractor shall seek clarification from the Authorized User if there is a discrepancy between the purchase order and what is listed on the contract.

## **F. RETURNS**

Products may be exchanged for credit in compliance with the Contractor's published return goods policy. This policy may include a restocking fee.



#### **G. LEASING AND FINANCING**

Procurement and other applicable laws of some purchasing entities may permit the use of leasing or alternative financing methods for the acquisition of products under the contract. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Authorized User. Authorized User is to follow the policy and guidelines outlined by their purchasing authority or state regulations and statutes.

#### **H. TRADE-IN**

Authorized User and Contractor may negotiate trade-in allowances.

**ATTACHMENT B**  
**NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS**

**1. Master Agreement Order of Precedence**

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

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (5) 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.

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

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

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

**Master Agreement** or **Master Ordering 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 Proposals 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.

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

a. The initial term of this Master Agreement is for 2 year. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

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 approval of 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.

g. 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). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

## **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.

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://calculator.naspovaluepoint.org/Account/Login?ReturnUrl=%2F>. 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; (5) Purchasing Entity and Contractor Purchase Order identifier/number(s); (6) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (7) Purchase Order date; (8) Ship Date; (9) 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, CDROM, 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 L.

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 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 vendor 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. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

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.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

#### ***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 must be for an equal guarantee period, and must be made at least 90 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

#### ***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.

#### ***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 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 and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, 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. Laws and Regulations**

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

## **15. 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 substantially 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.

## **16. Payment**

Unless otherwise agreed upon in a Participating Addendum, 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.

## **17. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and

made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under the Contractor's warranty are exclusive and are as set forth in Contractor's applicable warranty for the product.

### **18. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

### **19. 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**

### **20. 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), 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 five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

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.

## **21. Records Administration and Audit.**

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, 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.

## **22. 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 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.

### ***23. Public Information***

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

### ***24. 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.

### ***25. 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.

### ***26. 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.

### ***27. Cancellation***

Cancellation of this Master Agreement is governed by Attachment C, section 3, Cancellation of Contract. Any Participating Entity may cancel its participation upon 30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, 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.

## **28. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

## **29. 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 10 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.

e. Attachment C, including the Contractual Disputes provision in section 13, shall apply only to Participating and Purchasing Entities in the Commonwealth of Virginia unless those provisions are incorporated by reference into a Participating Addenda or Orders by other entities.

### **30. 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.

### **31. 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.

### **32. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers 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), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("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.

### ***33. 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.

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

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

### **35. 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.

### **36. 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 C**  
**COMMONWEALTH OF VIRGINIA**  
**GENERAL TERMS AND CONDITIONS**

The following terms and conditions are MANDATORY and shall be included verbatim in any Contract awarded by the Commonwealth.

A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.eva.virginia.gov](http://www.eva.virginia.gov) under "Vendors Manual" on the "I Sell to Virginia" tab.

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E). In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

e. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**D. ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**E. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**F. DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia. If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the non-debarred vendor will be debarred for the same time period as the debarred vendor.

**G. ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

**H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR RFPs:**  
Failure to submit a proposal on the official state form provided for that purpose may be a cause

for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

**I. CLARIFICATION OF TERMS:** If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

## **J. PAYMENT:**

### **1. To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with *Code of Virginia*, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the contractor of defects or improprieties in invoices within fifteen (15) days as required in *Code of Virginia*, § 2.2-4351. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, §2.2-4363).

### **2. To Subcontractors:**

- a. Within seven (7) days of the contractor's receipt of payment from the Commonwealth, a contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

**K. PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

**L. QUALIFICATIONS OF OFFERORS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

**M. TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

**N. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

**O. CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or

c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

U. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA VBO ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.

V. **DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:  
During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

W. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

X. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, web site portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:



- a. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
- (i) DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
  - (ii) Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above assessed for each order.
- For orders issued prior to July 1, 2014, the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

**Y. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.

**Z. BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, offerors shall state offer prices in US dollars.

**AA. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.