

**FULLY EXECUTED - CHANGE 1**

Contract Number: 4400028291

Original Contract Effective Date: 07/26/2023

Contract Change Date: 07/27/2023

Valid From: 07/27/2023 To: 06/05/2024

All using Agencies of the Commonwealth, Participating Political
Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 100692**Supplier Name/Address:**

GARTNER INC
12651 GATEWAY BLVD
FORT MYERS FL 33913-8007 US

Supplier Phone Number: 610-427-3426**Contract Name:**

Gartner IT Services NASPO 19-19-06

Purchasing Agent**Name:** Schwartz Thomas**Phone:** 717-346-3828**Fax:** 717-783-6241**Please Deliver To:**

To be determined at
the time of the Purchase Order
unless specified below.

Payment Terms

NET 30

Solicitation No.:

Issuance Date:

Supplier Bid or Proposal No. (if applicable):

Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
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*** Validity Period Changed ***

1	IT Consultation Services	0.000		0.00	1	0.00
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General Requirements for all Items:**Header Text**

This contract supports IT Consulting Services

No further information for this Contract

Information:

Supplier's Signature _____

Printed Name _____

Title _____

Date _____

**PARTICIPATING ADDENDUM
TO THE
NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
ACQUISITION SUPPORT SERVICES (PASS)
CONTRACT NO. 19-19-06**

This Participating Addendum (“PA” or “Contract”) is entered into pursuant to the Acquisition Support Services Contract No. 19-19-06 (“Master Agreement”) between Gartner, Inc. (“Contractor”) and the State of Hawaii (“Hawaii”) on behalf of the NASPO ValuePoint Cooperative Purchasing Organization (“NASPO ValuePoint”). The parties to this Addendum hereby create a separate contract (Contract No. 4400028291) between the Contractor and the Commonwealth of Pennsylvania (“Commonwealth”), acting through the Department of General Services (“DGS” or “Participating State”).

WHEREAS, Hawaii, on behalf of NASPO ValuePoint, entered into the Master Agreement with the Contractor, pursuant to which the Contractor provides Acquisition Support Services as described in the Master Agreement;

WHEREAS, the Commonwealth desires to participate in the Master Agreement as a Participating State to procure Acquisition Support Services from the Contractor under the Master Agreement; and

WHEREAS, DGS is authorized under Sections 1902 and 1908 of the Commonwealth Procurement Code, 62 Pa. C. S. §§ 1902 and 1908, to undertake and make this type of contractual arrangement on behalf of the Commonwealth.

NOW, THEREFORE, intending to be legally bound hereby, DGS and the Contractor agree as follows:

1. The Master Agreement, and all other documents attached thereto or incorporated by reference in the Master Agreement found at this link <https://www.naspovaluepoint.org/portfolio/procurement-acquisition-support-services-2019-2024/gartner/>, and attached hereto as **Exhibit A** to this Participating Addendum.
2. **Effective Date and Term.** This Participation Agreement shall become effective on the date the Commonwealth sends the fully executed and approved Participating Addendum to the Contractor (“Effective Date”). This Participating Addendum shall terminate or expire upon the earlier of (a) expiration or termination of the Master Agreement, or (b) termination of this Participating Addendum in accordance with its terms. If the Master Agreement is renewed or extended, this Participating Addendum shall automatically renew or extend for a term consistent with the term of the Master Agreement.
3. **Participating Addendum Terms.** DGS and Contractor are bound by the Commonwealth of Pennsylvania Terms and Conditions, attached hereto as **Exhibit B** and made a part of this Addendum.

4. **Additional Terms.** The terms and conditions of this Participating Addendum shall be the exclusive terms of agreement between the Contractor and the Commonwealth. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's website, quotations, invoices, business forms, click-through agreements, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor, and not binding on the Commonwealth.
5. **COSTARS Program.** COSTARS Program members shall be eligible to utilize this Participating Addendum under the same terms and conditions as the Commonwealth. By electing to allow for COSTARS participation in this Participating Addendum, Contractor agrees to pay the applicable annual administrative fee and abide by the reporting requirements described in **Exhibit C, COSTARS Clause for Statewide Contracts** to this Participating Addendum.
6. **Iran Free Procurement Certifications and Disclosure.** Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, a Contractor must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Commonwealth Procurement Code and is eligible to contract with the Commonwealth under Sections 3501—3506 of the Commonwealth Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). The Contractor must complete and return the Iran Free Procurement Certification form, which is attached hereto as **Appendix D** and made part of this Participating Addendum.

See the following web page for current Iran Free Procurement list:

<https://www.dgs.pa.gov/Documents/Procurement%20Forms/ProposedIranFreeProcurementList.pdf>.

7. **Worker Protection and Investment Certification.** Pursuant to Executive Order [2021-06](#), Worker Protection and Investment (October 21, 2021), the Commonwealth is responsible for ensuring that every Pennsylvania worker has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with all applicable Pennsylvania state labor and workforce safety laws. Such certification shall be made through the Worker Protection and Investment Certification Form (BOP-2201), **Appendix E**, which is attached hereto and made a part of this Participating Addendum.
8. **Lobbying Certifications and Disclosure.** With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. The Contractor must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this Participating Addendum as **Appendix F**. Commonwealth agencies will not contract with outside firms or individuals to

perform lobbying services, regardless of the source of funds.

9. **Primary Contact; Notice.** The primary contacts for this Addendum, as well as the recipients of any written notices shall be the individuals identified below or such other individuals as may be identified from time to time in a Notice sent by a designating party to the other parties set forth below, except that a Purchase Order issued pursuant to this Addendum will identify the Commonwealth Contact Person identified in the Purchase Order.

The Commonwealth's primary contact and Contracting Officer for this Addendum is as follows:

Raeden Hosler
Department of General Services
555 Walnut Street
6th Floor Forum Place
Harrisburg, PA 17101
(717) 346-7097
rhosler@pa.gov

The Contractor's primary contact for this Addendum, including and notice is as follows:

Scott Lyon
Director of Legal Affairs
Gartner
1201 Wilson Blvd., Suite 1700
Rosslyn, VA 22209
(571) 303-3469
scott.lyon@gartner.com

10. **Order of Precedence.** To the extent that there is a conflict between the contract documents, the order of precedence shall be:
- a. This Participating Addendum.
 - b. The Participating Addendum Terms and Conditions which is attached as **Exhibit A**.
 - c. The Master Agreement which is attached as **Exhibit B**.

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IN WITNESS WHEREOF, the parties hereto have executed this Participating Addendum as of the dates written below. Execution by the Commonwealth will be as described in the **Participating Addendum Terms and Conditions**.

CONTRACTOR: July 5, 2023

DocuSigned by:

David Vixama

CCE13228C8BD44B...

Signature

David Vixama Contracts Manager

Printed Name and Title

100692
SAP Number

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

By: To be obtained electronically
Deputy Secretary for Procurement Date

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of General Counsel Date

To be obtained electronically
Office of Attorney General Date

Participating Addendum Terms and Conditions

V.1 Participating Addendum Terms and Conditions

The Participating Addendum with the Contractor shall include the following terms and conditions:

V.2 Signatures

The Participating Addendum shall not be a legally binding Participating Addendum until the fully-executed Participating Addendum has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Participating Addendum prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Participating Addendum may be signed in counterparts. The Contractor shall sign the Participating Addendum and return it to the Commonwealth. After the Participating Addendum is signed by the Contractor and returned to the Commonwealth, it will be processed for Commonwealth signatures and approvals. When the Participating Addendum has been signed and approved by the Commonwealth as required by Commonwealth contracting procedures, the Commonwealth shall create a Participating Addendum output form which shall: 1) clearly indicate "Fully executed" at the top of the form; 2) include a printed Effective Date and 3) include the printed name of the Purchasing Agent indicating that the document has been electronically signed and approved by the Commonwealth. Until the Contractor receives the Participating Addendum output form with this information on the Participating Addendum output form, there is no legally binding Participating Addendum between the parties.

The fully-executed Participating Addendum may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Participating Addendum shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Participating Addendum shall constitute receipt of the fully-executed Participating Addendum.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Participating Addendum to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Participating Addendum legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Participating Addendum or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Participating Addendum or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Participating Addendum or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Participating Addendum or acknowledgement were not in writing or signed by the parties. A Participating Addendum or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

Participating Addendum Terms and Conditions

- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

V.3 Definitions

As used in this Participating Addendum, these words shall have the following meanings:

- a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Participating Addendum, that entity shall also be identified as "Agency".
- b. Commonwealth: The Commonwealth of Pennsylvania.
- c. Contracting Officer: The person authorized to administer this Participating Addendum for the Commonwealth and to make written determinations with respect to the Participating Addendum.
- d. Data: Any recorded information, regardless of the form, the media on which it is recorded or the method of recording.
- e. Days: Unless specifically indicated otherwise, days mean calendar days.
- f. Developed Works or Developed Materials: All of the fully or partially complete property, whether tangible or intangible prepared by the Contractor in fulfillment of the requirements of this Participating Addendum and covered in the scope of the work for the Project, including but not limited to: documents; sketches; drawings; designs; works; papers; files; reports; computer programs; documentation; data; records; software; samples; literary works and other works of authorship. Developed Works include all material necessary to exercise all attributes of ownership or of the license granted herein.
- g. Documentation: All materials required to support and convey information about the Services required by this Participating Addendum. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- h. Expiration Date: The last valid date of the Participating Addendum, as indicated in the Participating Addendum documents to which these Participating Addendum Terms and Conditions are attached.
- i. Purchase Order: Written authorization for Contractor to proceed to furnish Services.
- j. Services: All Contractor activity necessary to satisfy the Participating Addendum.

V.4 Agency Purchase Orders

The Agency may issue Purchase Orders against the Participating Addendum. These Purchase Orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Participating Addendum are acceptable and must be performed in accordance with the

Participating Addendum Terms and Conditions

Participating Addendum. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Participating Addendum.

Purchase Orders may be electronically signed by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of a Purchase Order. Purchase orders received by the Contractor after **4:00 p.m.** will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Participating Addendum or Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary. Purchase Orders under ten thousand dollars (**\$10,000**) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

V.5 Independent Prime Contractor

In performing its obligations under the Participating Addendum, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all Services and Developed Works in this Participating Addendum whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Participating Addendum.

V.6 Delivery of Services

Participating Addendum Terms and Conditions

Following the Effective Date of the Participating Addendum, the Contractor shall proceed with all due diligence in the performance of the Services with qualified personnel, in accordance with the completion criteria set forth in the Participating Addendum.

V.7 Estimated Quantities

It shall be understood and agreed that any quantities listed in the Participating Addendum are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Participating Addendum through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

V.8 Warranty

ALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS. GARTNER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE INFORMATION IN THE DELIVERABLES HAS BEEN OBTAINED FROM SOURCES THAT GARTNER BELIEVES TO BE RELIABLE. ALL DELIVERABLES SPEAK AS OF THE DATE OF DELIVERY TO THE CLIENT. GARTNER HAS NO OBLIGATION TO ADVISE CLIENT OF ANY CHANGE IN THE INFORMATION OR VIEWS CONTAINED IN THE DELIVERABLES.

V.9 Patent, Copyright, and Trademark Indemnity

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Participating Addendum which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document or other material provided to the Commonwealth under the Participating Addendum.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Participating Addendum.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

Participating Addendum Terms and Conditions

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Participating Addendum.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

V.10 Ownership Rights

Ownership of Deliverables:

Notwithstanding the requirements set forth in Solicitation, Contractor shall assign to Commonwealth ownership of any project Deliverable(s) originally created for and submitted to the Commonwealth, provided, however, that Contractor may use, reproduce, display and distribute excerpts and data from the deliverables, either alone or together with other material, in the ordinary course of Contractor's business, so long as such excerpts and data do not identify Commonwealth by name or contain any of the Commonwealth's confidential or proprietary information, and provided further that Contractor retains all right, title and interest in and to its processes, benchmarking data and data collection tools, assessment models and pertinent methodologies such as Strategic Planning, Contractor's copyrighted proprietary research and other pre-existing materials and data, such as Data Collection Templates and Survey Tools for Applications and Infrastructure, and benchmark comparisons ("Preexisting Intellectual Property"). Nothing contained in this Agreement shall preclude Contractor from rendering services to others or developing work products that are competitive with, or functionally comparable to, the Services. Contractor shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that Contractor shall not use or disclose any of Commonwealth's confidential information.

Preexisting Materials:

Commonwealth shall retain its rights in any proprietary material that Commonwealth supplies to Contractor. If the Commonwealth provides Contractor with materials owned or controlled by Commonwealth or with use of, or access to, such materials, the Commonwealth grants to Contractor all rights and licenses that are necessary for Contractor to fulfill its obligations under each Statement of Work. Contractor grants to Commonwealth for internal purposes only a worldwide, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of any Contractor "Preexisting Intellectual Property" embodied in the Deliverables.

Participating Addendum Terms and Conditions

V.11 Acceptance

Full access to the subscription service is provided on the first day of the period of performance for Subscription services. No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within **fifteen (15)** days after notification. Rejected item(s) left longer than **fifteen (15)** days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Participating Addendum and the cost thereof to the Commonwealth.

V.12 Compliance With Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Participating Addendum.

V.13 Participating Addendum Scope

- a. If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the Participating Addendum.
- b. The Contractor agrees to furnish the requested Services and Supplies to the Commonwealth as such Services and Supplies are defined in this Participating Addendum.
- c. Contractor shall comply with the IT standards and policies issued by the Governor's Office of Administration, Office for Information Technology (OA/OIT) as set forth in this Participating Addendum and including the accessibility standards set out in [IT Policy ACC001, Information Technology Accessibility Policy](#). The Contractor shall ensure that Services procured under this Participating Addendum comply with the applicable standards as set forth in this Participating Addendum. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Participating Addendum. The Contractor may request a waiver from an Information Technology Policy (ITP) by providing detailed written justification as to why the ITP cannot be met. The Commonwealth may waive the ITP in whole, in part or conditionally, or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.

Participating Addendum Terms and Conditions

- d. The Commonwealth reserves the right to purchase Services within the scope of this Participating Addendum through other procurement methods whenever the Commonwealth deems it to be in its best interest.

V.14 Rejected Material Not Considered Abandoned

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Participating Addendum with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

V.15 Compliance With Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Participating Addendum.

V.16 Environmental Provisions

In the performance of the Participating Addendum, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to: the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. Section 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. Section 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. Section 693.1.

V.17 Post-Consumer Recycled Content

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Participating Addendum must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

V.18 Recycled Content Enforcement

The Contractor may be required, after delivery of the Participating Addendum item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

V.19 Compensation

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

V.20 Billing Requirements

Participating Addendum Terms and Conditions

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- Vendor name and "Remit to" address, including SAP Vendor number;
- Bank routing information, if ACH;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the Services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;
- Price extension;
- Total price; and
- Delivery date of Services.

If an invoice does not contain the minimum information set forth in this paragraph and comply with the provisions located at <https://www.budget.pa.gov/Programs/Pages/E-Invoicing.aspx>, relating to the Commonwealth E-Invoicing Program, , the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Participating Addendum, updated price lists or any discounts negotiated by the purchasing agency.

V.21 Payment (Oct 2006)

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Participating Addendum; (b) **thirty (30)** days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Participating Addendum (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Participating Addendum. If any payment is not made within **fifteen (15)** days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No.

Participating Addendum Terms and Conditions

266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any Participating Addendum with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Participating Addendum or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Participating Addendum or Purchase Order.

V.22 Payment – Electronic Funds Transfer

- a. The Commonwealth will make Participating Addendum payments through Automated Clearing House (ACH). Within 10 days of award of the Participating Addendum or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
- b. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.
- c. It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

V.23 Taxes

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction Participating Addendum.

V.24 Assignment of Antitrust Claims

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The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Participating Addendum, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Participating Addendum.

V.25 Hold Harmless Provision / Limitation of Liability

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third-party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Participating Addendum, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.
- c. Limitation of Liability: Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the negligence or willful misconduct of Contractor, or its employees or indemnity for intellectual property infringement set forth herein, Contractor's total liability arising out of this Agreement and the provision of the Services shall be limited to the fees paid by the Commonwealth under the specific Statement of Work under which such liability arises.

V.26 Audit Provisions

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Participating Addendum. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Participating Addendum. The Participating Addendum shall preserve books, documents and records that relate to costs or pricing data for the Participating Addendum for a period of **three (3)** years from the date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

In the event the Commonwealth or its authorized agents carry out an audit or investigation that relates to this contract, the Contractor undertakes to fully cooperate and facilitate the audit and/or investigation work and at the request of Commonwealth, provide Commonwealth or its authorized agents with access to the Contractor's personnel as well as any information and documents that may be required in connection with such audit and/or investigation. Should such audit and/or investigation determine that any funds paid by Commonwealth have been

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paid in error per the terms of the Contract; the Contractor shall reimburse such funds forthwith. Where the Contractor fails to reimburse such funds, Commonwealth reserves the right to seek recovery and/or to take any other action as it deems necessary.

V.27 Default

1. The Commonwealth may, subject to the Force Majeure provisions of this Participating Addendum, and in addition to its other rights under the Participating Addendum, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Participating Addendum) the whole or any part of this Participating Addendum or any Purchase Order for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Participating Addendum or Purchase Order or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Participating Addendum or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Participating Addendum or Purchase Order or as otherwise specified;
 - 5) Improper delivery;
 - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Participating Addendum or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within **10** days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

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- 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of the Participating Addendum;
 - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Participating Addendum or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Participating Addendum or Purchase Order.
 - c. If the Participating Addendum or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Participating Addendum or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Participating Addendum price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
 - d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Participating Addendum.
 - e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
 - f. Following exhaustion of the Contractor's administrative remedies as set forth in the Participating Addendum Controversies Provision of the Participating Addendum, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

V. 28 Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under this Participating Addendum is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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The Contractor shall notify the Commonwealth orally within **five (5)** days and in writing within **ten (10)** days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the Participating Addendum is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Participating Addendum, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Participating Addendum or Purchase Order.

V.29 Termination Provisions

The Commonwealth has the right to terminate this Participating Addendum or any Purchase Order for any of the following reasons.

- a. **TERMINATION FOR CONVENIENCE.** The Commonwealth shall have the right to terminate the Participating Addendum or a Purchase Order issued against the Participating Addendum, in whole or in part, without cause by giving Contractor written notice (Notice of Termination) whenever the Commonwealth determines termination to be in its best interest. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination and will specify the extent to which performance under the Participating Addendum is terminated either in whole or in part and the date on which such termination becomes effective.

The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination. However, Subscription services are not refundable and paid in full at commencement of purchase order.

Failure to agree on any termination costs shall be a dispute handled in accordance with Section 30, Participating Addendum Controversies, of this Participating Addendum.

The above shall not be deemed to limit the Commonwealth's right to terminate this Participating Addendum for any reason as permitted by the other provisions of this Participating Addendum, or under applicable law.

- b. **NON-APPROPRIATION.** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Participating Addendum or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Services delivered under the Participating Addendum. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

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- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Participating Addendum or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Participating Addendum or a Purchase Order for other cause as specified in the Participating Addendum or by law. If it is later determined that the Commonwealth erred in terminating the Participating Addendum or a Purchase Order for cause, then, at the Commonwealth's discretion, the Participating Addendum or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.30 Participating Addendum Controversies

- a. Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa.C.S. § 1712.1, in the event of a controversy or claim arising from the Participating Addendum or a Purchase Order, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **sixty (60)** days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program,
<https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>
- b. If the Contractor or the Contracting Officer requests mediation and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120** days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120** days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the Contracting Officer fails to issue a final determination within the **120** days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.
- c. Within **fifteen (15)** days of the mailing date of the determination denying a claim or within **135** days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Participating Addendum in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Participating Addendum.

V.31 Assignability and Subcontracting

- a. Subject to the terms and conditions of this paragraph, this Participating Addendum shall be binding upon the parties and their respective successors and assigns.

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- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Participating Addendum without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Participating Addendum or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Participating Addendum, provided that the Contractor provides written notice of such assignment to the Commonwealth together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Participating Addendum.
- e. For the purposes of this Participating Addendum, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Commonwealth shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Participating Addendum and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Commonwealth written notice of any such change of name.

V.32 Other Contractors

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

V.33 Nondiscrimination/Sexual Harassment Clause

The Contractor agrees:

- 1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Participating Addendum or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of

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this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Participating Addendum.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the Participating Addendum.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the Participating Addendum relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have **100** or more employees and employers that have federal government contracts or first-tier subcontracts and have **50** or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

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8. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Participating Addendum through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Participating Addendum, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The Commonwealth may cancel or terminate the Participating Addendum and all money due or to become due under the Participating Addendum may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

V.34 Contractor Integrity Provisions

It is essential that those who seek to Participating Addendum with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than **50** percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than **50** percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this Participating Addendum.
- c. **"Contractor"** means the individual or entity, that has entered into this Participating Addendum with the Commonwealth.
- d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of **five (5)** percent or more interest in the Contractor.
- e. **"Financial Interest"** means either:
 - (1) Ownership of more than a **five (5)** percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

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- f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- g. **"Non-bid Basis"** means a Participating Addendum awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this Participating Addendum and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the Participating Addendum services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this Participating Addendum, except as provided in this Participating Addendum.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor or material under this Participating Addendum, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the Participating Addendum. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Contractor's submission of the Participating Addendum signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any Participating Addendum with any governmental agency;

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- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or Participating Addendum a written explanation of why such certification cannot be made and the Commonwealth will determine whether a Participating Addendum may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the Participating Addendum through the termination date thereof.

Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the Participating Addendum it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the Participating Addendum for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the Participating Addendum.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this Participating Addendum was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this Participating Addendum and by the submission of any bills, invoices or requests for payment pursuant to the Participating Addendum, certifies and represents that is has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any Participating Addendum negotiations or during the term of the Participating Addendum, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this Participating Addendum. Contractor shall incorporate this paragraph in any agreement, Participating Addendum or subcontract it enters into in the course of the performance of this Participating Addendum/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of Participating Addendum between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other Participating Addendum with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this Participating Addendum, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

V.35 Contractor Responsibility Provisions

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a Participating Addendum, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Participating Addendum, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Participating Addendum, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Participating Addendum it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Participating Addendum through the termination date thereof. Accordingly, the Contractor shall have

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an obligation to inform the Commonwealth if, at any time during the term of the Participating Addendum, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within **15** days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Participating Addendum with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the Marketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

V.36 Americans with Disabilities Act

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, Participating Addendum, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

- 1 Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
- 2 The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

V.37 Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Participating Addendum upon an agreement or understanding for a commission, percentage, brokerage, or

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contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Participating Addendum without liability or in its discretion to deduct from the Participating Addendum price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

V.38 Applicable Law

This Participating Addendum shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law. Any legal action relating to this Participating Addendum must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate.

V.39 Integration

This Participating Addendum, including the documents containing the parties' signatures, Participating Addendum terms and conditions, Request for Proposals, Contractor's proposal in response to the RFP, Contractor's best and final offer, if any, all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Participating Addendum, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Participating Addendum. No modifications, alterations, changes, or waiver to the Participating Addendum or any of its terms shall be valid or binding unless accomplished by a change notice or a written amendment executed by the appropriate parties.

The Contractor may not require the Commonwealth or any user of the Services acquired within the scope of this Participating Addendum to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services, unless the Commonwealth has approved the terms in writing in advance under this Participating Addendum, and the terms are consistent with this Participating Addendum. Further, changes to terms may be accomplished only by processes set out in this Participating Addendum; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Participating Addendum merely by their submission to the Commonwealth or their ordinary use in meeting the requirements of this Participating Addendum. Any terms imposed upon the Commonwealth or a user in contravention of this subsection (e) must be removed at the direction of the Commonwealth and shall not be enforced or enforceable against the Commonwealth or the user.

V.40 Controlling Terms and Conditions

The terms and conditions of this Participating Addendum shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties'

Participating Addendum Terms and Conditions

agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

V.41 Changes

The Commonwealth reserves the right to make changes at any time during the term of the Participating Addendum or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Participating Addendum and actual quantities; 2) to make changes to the Services within the scope of the Participating Addendum; 3) to notify the Contractor that the Commonwealth is exercising any Participating Addendum renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Participating Addendum to extend the completion date beyond the Expiration Date of the Participating Addendum or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Participating Addendum, nor, if performance security is being furnished in conjunction with the Participating Addendum, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Participating Addendum Controversies Provision.

V.42 Background Checks

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth Data and Commonwealth facilities (including leased facilities or facilities owned by third parties but utilized by the Commonwealth), either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <https://www.psp.pa.gov/Pages/Criminal-History-Background-Check.aspx>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Participating Addendum.
- c. The Commonwealth specifically reserves the right of the Commonwealth to conduct or require background checks over and above that described herein.
- d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge

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subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

V.43 Confidentiality

1. The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must clearly mark and designate the information as "confidential" to give notice to the other party, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Gartner; (3) entered the public domain through no fault of Gartner subsequent to the Commonwealth communication to Contractor; (4) is in Gartner's possession free of any obligation of confidence at the time of Client's communication to Gartner; or (5) is communicated by the Commonwealth to a third party free of any obligation of confidence. Additionally, Contractor may disclose such information to the extent required by legal process (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Participating Addendum and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Participating Addendum or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession upon request, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Participating Addendum's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Participating Addendum). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Participating Addendum, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Participating Addendum, in addition to other remedies available to the non-breaching party.
2. Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:
 - a. already known to the recipient at the time of disclosure other than through the contractual relationship;
 - b. independently generated by the recipient and not derived by the information supplied by the disclosing party.
 - c. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;

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- d. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- e. required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Participating Addendum.

3. The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
 - a. Prepare an un-redacted version of the appropriate document, and
 - b. Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - c. Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - d. Submit the two documents along with the signed written statement to the Commonwealth.
4. The Contractor shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefitting from Services under the Participating Addendum for any purpose not connected with the Contractor's responsibilities, except with consent pursuant to applicable laws or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to the Commonwealth prior to the direct disclosure.
5. Contractor will comply with all applicable laws or regulations related to the use and disclosure of information.
6. Additional privacy and confidentiality requirements may be specified in the Participating Addendum.

V.44 Insurance

The Contractor is required to have in place during the term of the Participating Addendum and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

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A. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.

B. Public Liability and Property Damage Insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Participating Addendum or the failure to perform under the Participating Addendum, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be **\$250,000** per person and **\$1,000,000** per occurrence for bodily injury, including death, and **\$250,000** per person and **\$1,000,000** per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Participating Addendum and at each insurance renewal date during the term of the Participating Addendum, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least **30** days written notice has been given to the Commonwealth. The Commonwealth shall be under no obligation to obtain such certificates from the Contractor(s). Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

V.45 Notice

Any written notice to any party under this Participating Addendum shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Agency's Contracting Officer as set forth on the Participating Addendum.

V.46 Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Participating Addendum. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Participating Addendum, it shall notify the Contractor using the legal contact information provided in this Participating Addendum. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

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- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Participating Addendum that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Participating Addendum that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Participating Addendum.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within **seven (7)** calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within **five (5)** business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

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- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Participating Addendum and shall continue as long as the Contractor has Requested Information in its possession.

V.47 Enhanced Minimum Wage Provisions

1. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than **\$15.00** per hour to its employees for all hours worked directly performing the services called for in this Participating Addendum/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least **20%** of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2023 and thereafter, the minimum wage rate will be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware and Maryland. The application amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the Participating Addendum conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the Participating Addendum or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

V.53 Sovereign Immunity

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No provision of this Participating Addendum may be construed to waive or limit the sovereign immunity of the Commonwealth of Pennsylvania or its governmental sub-units.

V.48 Notice of Delays

Whenever the Contractor encounters any difficulty that delays or threatens to delay the timely performance of this Participating Addendum (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Commonwealth stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth of any rights or remedies to which it is entitled by law or pursuant to provisions of this Participating Addendum. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay. If an extension of the delivery schedule is granted, it will be done consistent with V.42 Changes.

V.50 Contractor Hosted Security, Location, Status and Disposition of Data

Unless the Participating Addendum specifies otherwise:

- a. All Data must be stored within the United States;
- b. The Contractor shall be responsible for maintaining the privacy, security and integrity of Data in the Contractor's or its subcontractors' possession;
- c. All Data shall be provided to the Commonwealth upon request, in a form acceptable to the Commonwealth and at no cost;
- d. Any Data shall be destroyed by the Contractor at the Commonwealth's request;
- e. Any Data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Participating Addendum; and
- f. The Contractor shall comply with the provisions set forth in Exhibit B, Requirements for Non-Commonwealth Hosted Applications/Services.

V.51 Virus, Malicious, Mischievous or Destructive Programming

1. The Contractor shall be liable for any damages incurred by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
2. The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or

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malicious, mischievous or destructive programming that results from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).

3. In the event of destruction or modification of Software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
4. The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
5. The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide Services to the Commonwealth for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.
6. The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Participating Addendum.
7. The Commonwealth will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

V.52 Data Breach or Loss

- a. The Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the [*Breach of Personal Information Notification Act*](#), as amended November 22, 2022, P.L. 2139, No. 151, 73 P.S. §§ 2301—2330. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the [*Breach of Personal Information Notification Act*](#), the Contractor shall comply with the then current version of the following IT Policies (ITPs): [*ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data*](#); [*ITP-SEC024, IT Security Incident Reporting Policy*](#); [*ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information \(PII\)*](#); and [*ITP-SEC031, Encryption Standards*](#).
- b. For Data and Confidential Information in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
 - (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of Data or Confidential Information ("Incident") to the Commonwealth within **one (1) hour** of when

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the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such Data or Confidential Information.

(ii) The Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by the Commonwealth. At the Commonwealth's request, Contractor shall, at its sole expense, provide credit monitoring services to all individuals that may be impacted by any Incident requiring notice.

(iii) The Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by the Commonwealth due to Incidents.

c. As to Data and Confidential Information fully or partially in the possession, custody, or control of the Contractor and the Commonwealth, the Contractor shall diligently perform all of the duties required in this section in cooperation with the Commonwealth, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

Certificate Of Completion

Envelope Id: 45451A9BB5E64108BF9FA2CFF767BBBB

Status: Completed

Subject: v2 PA for PA _ Participating Addendum NASPO Hawaii

Source Envelope:

Document Pages: 35

Signatures: 1

Envelope Originator:

Certificate Pages: 1

Initials: 35

Kim Blimka

AutoNav: Enabled

56 Top Gallant Road

Envelope Stamping: Enabled

Stamford, CT 06904

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Kim.Blimka@gartner.com

IP Address: 136.226.59.93

Record Tracking

Status: Original

Holder: Kim Blimka

Location: DocuSign

7/5/2023 7:59:57 AM

Kim.Blimka@gartner.com

Signer Events**Signature****Timestamp**

David Vixama

DocuSigned by:



Sent: 7/5/2023 8:03:34 AM

David.Vixama@gartner.com

Viewed: 7/5/2023 8:26:44 AM

Contracts Manager

Signed: 7/5/2023 8:27:17 AM

Gartner, Inc.

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 98.238.100.66

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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Certified Delivered

Security Checked

7/5/2023 8:26:44 AM

Signing Complete

Security Checked

7/5/2023 8:27:17 AM

Completed

Security Checked

7/5/2023 8:27:17 AM

Payment Events**Status****Timestamps**



NASPO ValuePoint Master Agreement For Acquisition Support Services (PASS)

A Contract for the NASPO ValuePoint Cooperative Purchasing Program
Acting by and through the **State of Hawaii** (Lead State)

**Department of Accounting and General Services
State Procurement Office
1151 Punchbowl Street, Room 416
Honolulu, HI 96813**

And

**Gartner, Inc.
980 9th Street, Suite 2150
Sacramento, CA 95814**

Master Agreement Number 19-19-06

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- III. NASPO ValuePoint Program Provisions
- IV. Scope of Work
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- VI. Labor Categories and Hourly Rates
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Exhibit 1 – Minimum Qualifications for Labor Categories

Exhibit 2 – Labor Rates

Exhibit 3 – Sample NVP Detailed Sales Report

I. NASPO VALUEPOINT MASTER AGREEMENT OVERVIEW

A. Parties

This Master Agreement is entered into by and between the State of Hawaii, acting by and through the Department of Accounting and General Services, State Procurement Office (hereinafter called the “Lead State”), and Gartner, Inc. for the Procurement of Acquisition Support Services (PASS) for the benefit of Participating Entities and Purchasing Entities. The Contractor and the Lead State hereby agree to the following terms and conditions.

B. Effective Date

This Master Agreement shall be not be effective or enforceable until the date on which it is approved and signed (hereinafter called the “Effective Date”) by the State of Hawaii Administrator or designee.

C. Master Agreement Order of Precedence

1. Any Order placed under this Master Agreement shall consist of the following documents:
 - a. A Participating Entity’s Participating Addendum (“PA”);
 - b. NASPO ValuePoint Master Agreement Terms & Conditions;
 - c. A Purchase Order issued against the Master Agreement;
 - d. The Scope of Work;
 - e. The Solicitation or, if separately executed after award, the Lead State’s bilateral agreement that integrates applicable provisions;
 - f. Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
2. 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.

D. Term of the Master Agreement

1. **Initial Term.** This Master Agreement has a base period of two (2) years and shall terminate unless it is extended.
2. **Extension Terms.** This Master Agreement may be extended for up to three (3) additional 12-month periods or parts thereof at the Lead State’s discretion, by mutual agreement and upon review of

requirements of Participating Entities, current market conditions, and Contractor performance.

3. **Additional Provisions.** The Master Agreement may be extended pursuant to Hawaii Administrative Rules (HAR) §3-122-3, (a) if a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the chief procurement officer, provided: (1) The period of each extension is for one hundred eighty calendar days or less; (2) The procurement officer makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but not limited to the following: (A) A new contract cannot be executed by the time the contract expires; or (B) The need for the good or service is short term.
4. **Amendments.** The terms of this Master Agreement shall be not waived, altered, modified, supplemented or amended in any manner whatsoever without prior approval of the Lead State.

E. Contract Type

This Master Agreement is a Firm-Fixed-Price (FFP) contract based on labor hours under which only FFP task orders can be issued. For work performed by the Contractor's employees and/or Subcontractor employees, the labor categories, direct-productive-labor-hours (DPLH) and fixed labor rates shall apply. The pricing per labor category shall be based on the Contractor's offer submitted in response RFP-18-002-SW.

F. Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint cooperative procurement program. In this regard, know that Contractor will be expected to:

1. Promote the use of the Master Agreement.
2. Integrate each state's procurement officials' (CPO) permission to use the Master Agreement.
3. Acknowledge that Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. Contractor shall have a strategy to promote agreements of this nature.

II. DEFINITIONS

- A. **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.
- B. **Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.
- C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
- D. **HlePRO** means Hawaii Electronic Procurement System.
- E. **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.
- F. **Lead State** means the State centrally administering any resulting Master Agreement(s).
- G. **Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
- H. **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.
- I. **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- J. 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.
- K. Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- L. 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.
- M. 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.
- N. 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.
- O. Vendor** means the person or entity that has the capability to sell goods or services but have not entered into a formal contract. (See definition of Contractor).

III. NASPO VALUEPOINT PROGRAM PROVISIONS

A. Price and Rate Guarantee Period

- 1. All labor category rates must be guaranteed for the initial term and additional years of the Master Agreement.
- 2. Contractor is only authorized to provide services that awarded under this Master Agreement.

B. Participants and Scope

- 1. 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.

2. 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.
3. 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 to support documentation of participation and posting in appropriate data bases.
4. 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.

5. 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.
6. 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.
7. **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). Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
8. 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 VII. General Provisions, H. Cancellation, 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 Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after 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 VII. General Provisions, H. Cancellation or to terminate for default pursuant to section VII General Provisions, J Defaults and Remedies.

9. Contractor agrees, within 30 days of contract award, 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.

C. Administrative Fees

1. 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 part of the Contractor's pricing and not a separate line item.
2. 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.

D. NASPO ValuePoint Summary and Detailed Usage Reports

The Contractor shall provide the following NASPO ValuePoint reports.

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

5. 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.

E. NASPO ValuePoint Cooperative Program Marketing and Performance Review

1. 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.
2. 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.

F. NASPO ValuePoint eMarket Center

1. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
2. 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.

3. 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.

G. 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.

H. Individual Customers

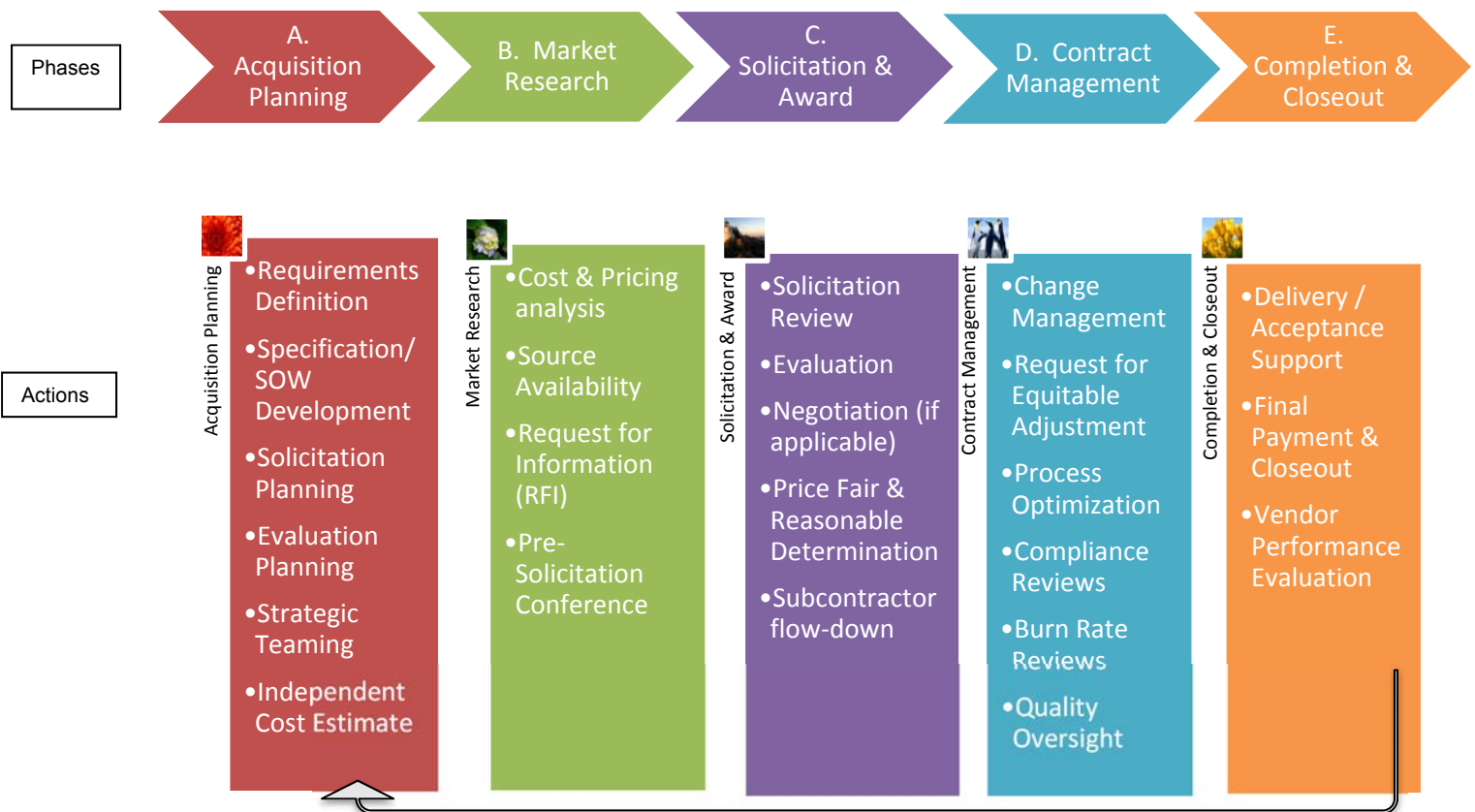
Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including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

IV. SCOPE OF WORK

A. Contractor guarantees a continuing supply of quality services within the scope of work for acquisition support services.

1. The diagram below depicts services that support procurement activities based on a general acquisition lifecycle. Actions indicated within each phase (A. through E.) are examples of when they may be utilized throughout the lifecycle and may be required at any phase.

Acquisition Life Cycle



This contract is intended to supplement the resources needed to assist procurement personnel to obtain the desired goods and/or services. For example, if the agency has the need to procure IT consulting services, the Acquisition Support Services Contractor(s) will assist in writing specifications and/or develop an RFP and/or provide any other acquisition support services that will provide the agency with a resulting contract for such services.

Note: This contract will not include any services related to the procurement of construction.

2. Contractor Responsibility

The Contractor shall be able to provide **all services in all categories** described below. If the Contractor does not maintain the subject matter expert in-house, it will be their responsibility to secure the needed services as the Prime Contractor.

Outside contractors may be utilized to prepare specifications and work statements in the development of a solicitation. Contractors paid for those services shall be precluded from bidding on or receiving a contract when they participated in any way in the development of the solicitation package or any resulting contract. Therefore, if a Contractor is hired to provide any services through the PASS contract, the Prime Contractor and any of its subcontractors are precluded from bidding or responding to the resulting solicitation.

3. General Requirements

Contractors shall be responsible to meet the general requirements applicable across all categories. These requirements include:

- ☐ Customer Service
- ☐ Management
- ☐ Quality Control
- ☐ Personnel/Staffing
- ☐ Experience

Contractors are expected to maintain the highest standards of these requirements throughout the life of the contract and must require all Subcontractors to attest to the same standards of service.

4. Service Categories

The following describes the service categories and expected outputs that are within the scope of work of the Master Agreement. These services are actions that may be utilized throughout the acquisition lifecycle and may be required at any phase.

A. Acquisition Planning

Category One – Specifications/Scope of Work Review

After a need is determined, the quality, price and the performance of a product or service depend almost entirely on the purchase description used to communicate the requirement. If a specification was used as a method of describing the requirement, which

mostly happens for services, that specification must be clear and concise. Challenges by potential suppliers, costly delays in completing a project or unnecessary problems further down the line are, in most instances, attributed to an improper, inadequate description of definition or requirements. The additional effort spent at the beginning of the procurement lifecycle increases the probability of full satisfaction in meeting the needs of the end-user, procurement and contract specialist and Contractor/supplier.

This category of services is for the **review and/or assistance in development** of a scope of work (SOW) or specification(s). If not available in-house, the technical specification development by a subject-matter-expert shall be obtained/contracted by the awarded Contractor(s) for this category. Services within this category are as follows:

1. Review Services

Provide recommendation to amend/develop specifications/SOW to produce correct, clear, and concise obligations of all parties with respect to the needed goods or services. Review services shall include verification, validation, and recommendation so that the SOW/specifications for needed goods and/or service clearly identify how the specification/SOW may be amended/changed to reflect the following:

- The wording of the scope shall be precise.
- The overall message should be clear and understandable.
- The specification should simplify the process.
- The tolerances should be reasonable.
- The scope/specification should provide a relatively easy process to verify acceptance or rejection.
- The specification should be exact.
- The specification should not be restrictive, but be broad enough to allow competition. If, however, there is justification for a restrictive specification/SOW, the report/recommendation shall provide a clear explanation for the need of the restrictive specification.
- The specification/SOW should provide some built-in flexibility that is applicable to the industry.

2. Requirement Analysis

Requirement analysis is value analysis applicable to the writing of specifications or SOW to eliminate products and services that are not cost effective. Contractor shall identify and make recommendations to specifications or SOW to ensure that an agency will obtain the best products or services or meet the goals that are available in the market at prices that are determined fair and reasonable.

Requirement analysis services shall include review, analysis and recommendation

and clearly identify how the specification/scope of work may be amended/changed to reflect the following, as applicable:

- Eliminate a requirement that is not cost effective.
- Improve the quality level without impacting the cost(s).
- Describe requirement(s) of quality standards to increase the service life.
- Achieve total value, i.e. not only initial expense as the award factor.

3. Specification Writing (Technical)

Contractors' support team members shall possess strong communication skills and expertise in needed topics of and programs. In addition, technical writers must have the skills to research and effectively interview subject matter experts (SMEs), if they are not the SMEs themselves. The technical writer should gather information and communicate complicated ideas in a clear and informative manner.

Contractor(s) shall be able to provide specification writing services for all types of specifications, such as design, specifications, performance specifications, or market grades to name a few.

Contractor shall assist in development and preparation of pre-award Request for Information (RFI), Statements of Work (SOW), Statements of Objective (SOO) and other requirements documents. This effort includes assisting in researching and drafting specifications and standards, including Performance-based Work Statements (PWS); developing performance measures, providing consultation and recommendations; and coordinating requirements documents. Note: State to state may vary on what they call SOW, i.e. statement of work, statement of need, scope of work, etc.

Outputs: SOWs; SOOs; PWSs; and related documents, i.e. restrictive specifications justification.

Category Two – Procurement Strategy/Acquisition Strategy Plan

The procurement team is made up of stakeholders that will participate in developing the procurement strategy plan. Stakeholders are individuals who have an interest in the needed goods or services. These individuals provide a significant contribution to the effort based on their subject matter expertise of the project scope or deliverables. Depending on the complexity of the procurement, support services may be needed to develop the plan. Services within this category are as follows:

1. Procurement Plan Development/Review

Contractor shall provide services to include advice and recommendations for all elements in the plan, including approaches, options, strategies, risks, contracting methods, competition, sources, cost, milestone schedule, etc. If not available in-house, the subject-matter-expert(s) shall be obtained/contracted by the awarded

Contractor(s) for this category. The plan should contain the following information:

Acquisition Background

Description of Requirement/Statement of Need
Conditions
Background and Contract History
Contract Type: Unit costs or lump sum
Performance Period
Capability and capacity of Performance
Estimated Schedule
Estimated cost/budget

Plan of Action

Service Description
Potential Sources
Market Research Results/Interested Sources
Acquisition Approach
Competition
Source Selection Procedures
Contracting Considerations or Incentives
Other Considerations

Contract Administration

Surveillance: Monitoring timelines with milestones
Monitoring performance during contract period
Verifying contractor's performance of SOW through
checklist(s)

2. Research/Reports

The Contractor shall research existing Government-wide contracts for available products and services. Contractor shall evaluate different approaches to and sources for acquisition support. Contractor shall research available suppliers and compare the services and costs of obtaining support from different providers. Information gathered shall be provided in a report form for use in the development of a procurement plan.

Contractor shall provide advice and recommendation for all elements in acquisition plans, including approaches, options, strategies, risks, contracting methods, competition, sources, cost, milestone schedule, etc. Research existing Government-wide contracts for available products and services. Evaluate different approaches to and sources for acquisition support. Research available suppliers and compare services and costs of obtaining support from the different providers.

Outputs: Written acquisition/procurement plans.

Category Three – Independent Government Cost Estimate

An Independent Government Cost Estimate (IGCE) is a tool developed by government personnel to estimate the costs incurred by a Contractor in the performance of a contract. An IGCE is generated by the government, who may utilize and obtain input from an outside Contractor. Such Contractor remains confidential and will not be allowed to respond to a solicitation for which it participated in the IGCE in any manner whatsoever. The IGCE is an unbiased realistic cost estimate that reflects a clear understanding of the requirements. IGCEs serve various functions as:

- A projected, anticipated, or probable cost;
- A benchmark for establishing cost/price analysis;
- An analysis of reasonable and required resources to perform the contract; and
- A justification for decisions made throughout the procurement life cycle.

Specifically, IGCEs are used to project and reserve funds for acquisitions, determine if assumptions in a cost proposal are based on the same or similar assumptions, and determine fair and reasonable pricing.

This category of services is for **consultation and/or assistance in the development** of IGCEs. Government agencies do not always have sufficient resources or expertise to conduct these cost estimates on their own and may rely on third party Contractors to generate these reports on their behalf. Contractors providing these services under the resultant cooperative agreement shall be required to sign non-disclosure agreements and may not have a vested interest in the contract for which the Contractor is generating the estimate. Contractor must be unbiased and objective in its approach and methodologies. Services within this category are as follows:

1. Data Collection

Contractor shall collaborate with the agency to gain a thorough understanding of the contract scope of work for which the IGCE is being generated. Contractor shall establish a plan that identifies stakeholders and other resource requirements necessary to generate the IGCE, including a schedule that specifies the start date and delivery date for the final report, and a list of all potential sources of information required to complete the cost estimate.

At a minimum, the Contractor shall request and receive the following information:

- Statement of Work (SOW) and supporting scope documents (solicitations, drawings, plans, etc.)
- Any agency-developed cost estimates or contractor cost proposal and technical approach.
- Basis of Estimate (BOE), including a description of the scope, methodologies, references and defining deliverables, assumptions and exclusions, clarifications, adjustments, and level of uncertainty.

Other documentation or information that is useful in performing an IGCE include, but are not limited to:

- Past purchases of similar products or services
- Market research and knowledge of current economic conditions
- Proposal narrative, including background
- Work Breakdown Structure (WBS) and WBS Dictionary
- Project schedule
- Risk management plan
- Rates for fees or other mark-ups
- Lists of government-furnished property, equipment or services
- Cost estimate back-up documentation such as contracted labor rates and associated mark-ups, subcontracted quotes, specification sheets, purchase orders, and catalog cut sheets

2. Sufficiency Review

Once all requested information has been received, Contractor shall review the information for sufficiency to ensure adequate quantity and quality of data exists to develop an accurate and effective IGCE. The Sufficiency Review serves to:

- Determine all costs involved in performing the contract scope of work, including any direct and indirect costs as well as contractor profits and fees.
- Examine the information to ensure that it meets the technical requirements for its intended purpose.
- Determine whether the information is clearly documented, well organized, and presented at an appropriate level of detail, and that summary documents are traceable to the supporting documentation.
- Look at the depth and breadth of the supporting documents, and data contained therein.

The Sufficiency Review may determine that certain documentation is insufficient for proceeding with the cost estimate. In such instances, Contractor shall notify the agency, provide a list of the documents that are insufficient, and provide reasons for the finding or specific information needed to make the document acceptable.

3. Data Analysis

Data Analysis consists of two components: review and analysis.

The review component consists of an-depth examination and qualitative analysis of all the sufficient information requested and received as part of Data Collection. Contractor shall conduct a thorough review of the SOW, agency-developed cost estimates or contractor-developed cost estimate or proposal, BOE, and any other

sufficient information received. Contractor shall apply the appropriate estimating methodologies to the data to generate the IGCE.

Once the IGCE is generated, the estimate must be validated. Contractor shall employ the appropriate cost-validation techniques to test the cost estimate and determine whether it is reasonable and includes all necessary costs. Some commonly-accepted techniques include spot checking and preparing a check estimate. Offerors shall detail in their proposals the cost-validation techniques they utilize to validate cost estimates.

4. Results Reporting

Contractor shall prepare an in-depth IGCE report detailing its findings. The IGCE report prepared by the Contractor shall describe the BOE and provide the agency with recommendations based on the findings to assist in decision-making throughout the procurement life cycle. Contractor may be required to update the IGCE report as the acquisition progresses through the different phases of the procurement life cycle.

Contractor shall provide services that may include but are not limited to research and analysis of past purchases of similar products or services, current market value of the products or services, or other agency purchases of similar products and services.

Outputs: IGCEs.

B. Market Research

Category Four – Market Research

Market Research is a necessary step to identify available sources to meet the needs of any given solicitation. Market research refers to the examination of available sources to find the available sources of supply which may identify critical business requirement. Due to limited resources or timing, agencies may require the assistance of an outside Contractor to provide necessary data to develop a solicitation that will reach the widest distribution possible.

This category of services is for **consultation and/or assistance with market research services**. Services within this category are as follows:

Market Research Services – Contractor shall research available suppliers and compare the services and costs of obtaining goods or services from difference providers. Information gathered shall be provided in a report form for use in the development of a competitive solicitation. Contractor shall provide advice and recommendation for all elements in market research, including approaches, options, strategies, risks, methods, competition, sources, cost, milestone, etc. Research existing Government-wide contracts

for available products and services. Research available suppliers and compare services and costs of obtaining support from the different providers.

The market research team should consider the following:

- The overall budget for the project should be clearly stated and the funding source should be identified prior to commencement of services.
- The Market Research Plan should be agreed upon by all parties before any commencement of services.
- The methodology to be used should be clearly specified and agreed upon by all parties.
- The research should have a simplified process.
- The target markets should be clearly identified.
- The research should be broad enough to capture the largest possible data set.
- The research should not be overly restrictive.
- The research should provide some built-in flexibility that is applicable to industry.

Outputs: Market research documentation.

Category Five – Cost & Pricing Analysis

A Cost & Pricing Analysis conducted before a Request for Proposal (RFP) is released will assist a State in determining how to capture all costs related to a project, determine which method is best for evaluating cost, and if the budget for said project is realistic. Cost & Pricing Analysis is a key component to predicting the viability of a project. Because of limited resources or timing, agencies may require the assistance of an outside Contractor to assist with a Cost & Pricing Analysis for stakeholder review.

Cost & Pricing Analysis may also be conducted after BAFOs are received. And Cost & Pricing Analysis may also be conducted post award for contract renewals, modifications or assistance in determination of termination due to non-compliance with contract terms.

This category of services is for **consultation and/or assistance with cost & pricing analysis services**. Services within this category are as follows:

Cost & Pricing Analysis – Contractor shall assist in developing estimated cost and price elements for the work to be performed to prepare analyses for Stakeholders to make sound decisions on the financial viability of a project.

Cost & Pricing Analysis services shall include, but are not limited to:

- Developing plans and alternatives for effective price competition
- Informing states of impact of budget on technical, contract, and pricing outcomes
- Developing approach for State's/Stakeholder' budget planning

- Developing cost proposal solicitation documents to aid states in the development of the RFP
- Analyzing contracts/programs to assess price competitiveness
- Providing alternatives and research for stakeholders
- Providing estimates (case-by-case based on need of State/Stakeholder).
- Demonstrating value of RFP and/or new system/product to State/Stakeholder
- Providing a Make-or-buy analysis
- Providing a Go, no-go analysis
- Developing and analyzing BAFO requests
- Determining that the prices submitted by Offerors are acceptable, fair and reasonable
- Providing cost analysis during RFP evaluation – services performed to help States/Stakeholders analyze the cost proposals of several vendors to find best value
- Developing evaluation support documentation to help States/Stakeholders validate the reasonableness of proposed labor rates as well as indirect rates (fringe, overhead, general and administrative, and materials)
- Performing independent review of each cost element within an Offeror's cost proposal
- Providing post-award services (contract renewals, modifications, assistance in determination of termination if not in compliance with contract terms)
- Burn Rate Analysis
- Analysis of Change Orders & Modifications
- Award fee/incentive fee analysis
- Closeout payment analysis

Outputs: Cost and pricing analyses.

C. Solicitation & Award

Category Six – Solicitation Review or Preparation

The solicitation document is the official document inviting the vendor community to respond to the needs of the government entity. The solicitation should foster competition and ensure fair and equitable treatment of interested parties. Competition has multiple levels. Competition exists not only in prices but also in the technical competence of the vendors and in the quality of their products or services. The request for proposal process allows the opportunity for vendors to submit innovative solutions, increasing the Government's latitude of choice and assuring the reasonableness of costs.

This category of services is for the **review and/or development** of a solicitation document. Services within this category would be as follows:

1. Review Services

Contractor shall provide recommendation to amend/develop any part of the solicitation document to produce correct, clear, and concise obligations of all parties with respect to the needed goods or services. Review services shall include verification, validation, recommendation to improve at minimum the following sections of the solicitation:

- Scope of work, statement of work or specifications.
- Standard bid/proposal clauses such as bid guarantee, indemnification, intellectual property rights, insurance, etc.
- Evaluation criteria.
- Bidder/Offeror qualifications.
- Proposal format.
- Administrative and Technical Response Requirements.
- Price and Cost sheets.
- Contract administration, post award.
- Payment terms.

2. RFP Development

Contractor shall develop and prepare the solicitation document, which may be a request for quotes (RFQ), request for proposals (RFP), including two-step process solicitation or any other hybrid solicitation within the system of that State. The solicitation shall include all appropriate solicitation terms and conditions applicable

Outputs: Solicitations

Category Seven – Source Selection

The nature of the source selection planning process, the techniques for obtaining information, the procedures used in evaluation, and the decision-making methods vary from procurement to procurement. Source selection planning entails: preparing to receive bids or proposals, preparing to apply evaluation criteria, and determining standards to select a Contractor. Proposals are often separated into technical and price sections with each evaluated separately. Evaluation may be complex, requiring a panel experts. Some proposal evaluation may require a consultant's assistance. The Source Selection Plan (SSP) should include: evaluation criteria, evaluation standards, weighting system, screening system, and source selection process.

This category of services is for **assistance in preparation of a source selection plan and source selection activities**. Services within this category are as follows:

Source Selection – Contractor shall develop and prepare source selection plans, in accordance with State statute and rules; instruct evaluation team members on roles and responsibilities; act in the capacity of an advisory role during the evaluation, which may include cost estimating or technical subject matter expertise; ensure Conflict of

Interest/Nondisclosure forms are signed; prepare evaluation sheets or score sheets; and prepare draft of source selection decision memorandum.

Outputs: Source Selection Plans (SSP), Evaluation Sheets

Category Eight – Cost Realism Analysis

Cost Realism Analysis is usually conducted after cost proposals have been received in response to a RFP. Cost Realism Analysis may be requested by States to determine if all components of cost have been contemplated from all vendors. Determining if cost proposals are acceptable and fair will assist States in a successful evaluation and award of a contract which is in the best interest of the State. Cost realism is about the system of logic, the assumptions about the future, and the reasonableness of the historical basis of the estimate. It's about the estimating information (cost data) that makes up the foundation of the estimate.

This category of services is for **consultation and/or assistance with cost realism analysis services**. Services within this category are as follows:

Cost Realism – Contractor shall independently review and evaluate specific elements of each Offeror's proposed cost estimate to determine whether the cost estimate is realistic for the work to be performed; reflects a clear understanding of the requirements; and is consistent with the unique methods of performance and materials described in the Offeror's technical proposal. Cost realism analysis is conducted by evaluating the supportive data that form the bases of the individual elements of cost to determine probable cost of the performance. The probable cost shall be used for the purposes of evaluation to determine the best value. The probable cost is determined by adjusting each Offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

Probable Cost Estimate: is the Purchasing Entity's estimate of what it will cost for the Offeror to complete the contract based on the Purchasing Entity's evaluation of the offeror's technical proposal and proposed costs. This estimate is complimentary with and must be performed in conjunction with all cost realism analyses and is a principal product of the Purchasing Entity in the source selection evaluation process.

Cost Realism services shall include, but are not limited to:

- Determining the Offeror's price is realistic for the work proposed
- Understanding and implementation of contract risk factors
- Developing a Purchasing Entity's probable cost estimate
- Conducting cost to technical realism analysis

Outputs: Cost realism analyses.

D. Contract Management

Category Nine - Contract Development/Contract Formation

The goal of contract development is to reduce in writing contract goals, contract type and contract elements. Identification of contract goals include the description of goods or services; delivery information (if applicable); protection of the financial interests of the agency; and any potential areas of dispute such as defining acceptance, handling wrong product, delays, personality conflicts, breach, payment or changes in a contract. The goals also include change order procedures.

Contractor shall provide assistance to the government entity in the formulation of the contract between the awarded vendor and government entity.

This category of services is for **consultation and/or assistance with contract development**. Services within this category are as follows:

Contract Development

Requirements of the contractor, and/or their sub-contractor will include:

- A general working knowledge of each individual state's procurement rules and regulations.
- A general working knowledge of the entity's General Terms and Conditions.
- Appropriate staff with the level of experience to handle the different needs or difficulties of the contract.
- To be able to work with the state entity to develop a schedule for completion of the contract.
- Must have existing legal staff available to vet the contract for each entity's legal requirements.
- Must be able to interact with the awarded vendor's attorney to produce a contract that is amicable to both parties.
- Must be able to format the contract to the entity's preference.
- Must provide pricing for the different levels of staffing that will provide service.
- Will be required to be available to handle and supplemental agreements or legal issues that arise out of the formation of the contract for the duration of the contract.

Outputs: Contract documentation.

Category Ten – Contract Management

Contract management refers to post-award type activities, such as contract implementation, contract administration, measurement of work completion and payment computation. Moreover, it involves the monitoring of a contract, making important

changes and modifications to the contract and dealing with related problems. Activities in contract management facilitate a positive working relationship between the government customer, procurement staff, and the contractor for the successful implementation of the contract award. Acquisition consultants can assist the government procurement staff and program managers in various capacities of administration and facilitation with the contractor, not including any inherent governmental duties.

Services within this category are as follows:

1. Contract Administration

Manage the relationship between the Contractor and end user, including the monitoring contract fulfillment on the part of government agencies. Development of the Contract Administration Plan (CAP) which will define how the contract will be administered. Monitor contractor compliance with terms of the contract, including site visits and labor interviews.

The CAP provides a mechanism to reconcile the various contract documents and the order of precedence into a management tool that can be used to focus and govern implementation activities. The plan itself will vary based on the complexity, risk, and scope along with the requirements of each contract. In many cases a CAP should only be developed for high-risk or highly complex procurements. The frame of the plan should focus on the Who, What, When, Where, and How of contract administration. CAPs generally address a common set of topics, with particular emphasis on process, output and outcome. In government contract management, there may be less emphasis on the “process” the contractor uses to achieve the goals of the contract than of the achievement of the expected outputs and outcomes.

While Contract Administration Plans generally share a similar structure, the inclusion of each topic into the CAP should be chosen based on necessity rather than out of formality. Contract Administration Plan topics may include:

- Project description
- Period of performance
- Schedule, critical milestones and/or delivery dates
- Critical path tasks and deliverables
- Roles and responsibilities
- Data and reporting
- Inspection and acceptance
- Personnel requirements
- Testing

- Warranty provisions
- Watch list items
- Special terms and conditions
- Insurance
- Process for managing change and issue resolution

Outputs: Performance Workplan or CAP; Documentation of Contract Performance such as Observation Record, Compliance Record, Discrepancy Record, Unsatisfactory Performance Report, Summary Evaluation Report, Contractor Status Report.

2. Vendor Performance Plan Development/Review

The Contractor shall have experience drafting comprehensive plans outlining the agency and vendor responsibilities and requirements in an easy to understand document. The plan must describe processes needed and recommend tools that will guide the contracting agency through the vendor performance evaluation. The plan shall include, but not be limited to, how to:

- Improve communication between buyers and vendors regarding performance
- Encourage better performance and accountability through incentives and penalties
- Enable performance analysis through Key Performance Indicators (KPI) and benchmarking
- Capture performance data
- Identify strategic priorities and set targets
- Capture performance data
- Meet strategic priorities and improve programs

The plan shall include the method for scoring and weighting the evaluation criteria and how scores shall be tied to an award or incentive fee determination along with penalties. The plan shall explain how Contractors must receive evaluation criteria, be informed of their performance during the contract, be debriefed at the end of the contract and deal with appeals.

3. Contract Modifications

Assist in the preparation of incentive and award fees. Incentive fees are typically dependent upon the performance over a given period and are usually taken in relation to a benchmark index. Award fees provides an additional profit or fee amount that may be awarded, in whole or in part, based upon periodic evaluations of ongoing contractor performance. Assist in review of directed changes, formal

changes to the original contract resulting from the buyer's actions or directions that impact the cost or schedule for performance. Determine if a constructive change has occurred, that is, any action or inaction on the part of the agency that have not been made through a formal change order, which causes the Contractor to perform additional work outside the scope of the original contract. Contractor can assist government procurement staff and program managers in review and recommendation to make the appropriate contract modification.

Outputs: Award or incentive fee determinations; contract modification determination.

E. Completion & Closeout

Category Eleven – Vendor Performance Evaluation Program

Contract closeout involves several activities. Unlike a purchase order where receipt of the items ordered and subsequent payment constitute closure, a contract requires documentation to the contract file that includes a written report with the description and analysis of the Contractor's performance. A quality vendor performance review (aka performance evaluation) assesses how the vendor is performing against Key Performance Indicators (KPI)'s and Service Level Agreements (SLA)'s established in the vendor's contract. However, it can also show non-contractual performance issues, such as incidents that aren't measured by a service level.

This category for services is for the assistance in the development and implementation of a Vendor Performance Evaluation Program. This does not include vendor performance evaluation for construction contracts. Services within this category are as follows:

Evaluation Program

The contractor shall understand and have insights into the requirements needed to develop a vendor performance evaluation program. The contractor shall work with the contracting agency to determine information that is useful in creating a vendor performance evaluation to include, but not limited to:

- When the vendor performance evaluation is needed and how often it should be measured.
- The KPI's, such as contract compliance, customer satisfaction, cost competitiveness, cost control, continuous improvements, and timeliness should be clearly identified along with formulation of templates for the evaluation which shall become standardized.

Output: Key Performance Indicators, Vendor Performance Evaluation Program

F. Other Services

Category Twelve – Procurement Policy

Procurement planning is part of the annual budgeting process. Each departmental head is responsible for planning his/her project's estimated procurement needs on an annual basis through the use of the annual procurement plan (APP), which indicates the items to be bought in the various quarters of the year.

Services within this category are as follows:

Procurement Policy Writing – Contractor shall assist in developing a high-level overall plan embracing the general goals and acceptable procedures as it relates to the expenditure of governmental funds

Procurement Policy services shall include, but not be limited to, writing procedures for:

- Appointing and paying consultants
- Appointing and paying temporary staff
- Appointing and paying casual workers
- Procurement planning for good and services
- Vendor Selection, to include:
 - Selection criteria
 - Use of dealers and sole suppliers
 - Recurring purchases
- Procurement Processes
- Procurement Controls

Outputs: Policy analysis and briefings. Policy guides and handbooks.

Category Thirteen – Category Management

Category management is a strategic approach to purchasing that allocates a government's procurement resources into specific categories of spending to be analyzed by category managers and aligned with the marketplace through in-depth spend and market analyses.

The main objective of Category management is to build efficiencies and maximize purchasing decisions across the agency by reducing duplication in the contracting process; better leveraging the government's buying power, and promoting the use of innovative and best in class solutions.

By consolidating purchases into main areas of spend, category management serves to move the government away from managing purchases and evaluating prices individually across multiple purchasing units to more directly managing entire categories of common spend to deliver better value for the entire agency.

This category for services is for the **assistance in development and implementation**

of an action plan for Category Management or Product and Service Catalogs. If not available in-house, the action plan development or implementation by a subject-matter-expert shall be obtained/contracted by the awarded contractor(s) for this category. Services within this category are as follows:

1. Data analysis

The Contractor shall have knowledge of principles and practices in public procurement including category management and have a clear understanding of various types of commodities and government services. Contractor shall be well versed in data analysis including the collecting of historical procurement data and analyzing agency spend data and procurement needs. The contractor shall also conduct in depth spend analysis using the agency's existing code structure (NIGP, NAICS, UNSPC or other). If no code structure exists, the vendor will help to consolidate minor categories and identify major categories of spending.

2. Supplier analysis

The Contractor shall have in-depth knowledge of the supplier marketplace and current economic conditions. The contractor will conduct market analysis to align the identified major categories of spending with the marketplace. Suppliers in the marketplace will be analyzed on their market share, historical changes and overall business health. Emphasis will be put on identifying suppliers that are looking to gain market share and can be leveraged for best prices; and identifying overlaps in suppliers to consolidate categories.

3. Action plan development

The Contractor shall have experience developing specifications and scopes of work aimed at creating efficiencies and reducing costs, developing and executing procurement strategies, driving process improvements and effectively instituting key performance metrics. The contractor shall develop, draft and assist in the execution of an action plan that details the findings of the data and supplier analyses and provide recommendations for implementing category management organization/agency-wide. Action plans should be inclusive of procurement organization and process changes, including timelines and flow charts of how the organization will move from its existing purchasing structure into a category management structure.

The action plan shall include but not be limited to:

- The purpose, strategic mission and vision associated with the new organization direction and structure of the organization/agency.

- The development of an ongoing program to analyze purchasing trends, develop options to reduce costs, improve timely delivery, and enhance the purchasing agencies supplier management strategies, including; performance tracking, benchmarking and planning for future category adjustments.
- The development of a system by which the agency can monitor and track spending data including but not limited to information pertaining to what the agency buys, who it buys it from and what it pays.
- The step by step walkthrough and explanation of requirements for a phased in approach to reorganizing the existing workforce and hiring additional employees to successfully implement a Category Management organization/agency/office structure.

4. Organizational restructure

The contractor shall have knowledge of staffing and management practices as it relates to structuring and organizing a workforce for Category Management. The contractor will be responsible for identifying, communicating and working with stakeholders to identify category managers, category workforce and acquisition workforce. As these stakeholders are identified, the contractor shall collaborate to share the knowledge of the analyses, create insights and trainings designed to serve all stakeholders and align staff with the strategic vision. The contractor will assist in overseeing all hiring and management decisions during implementation to ensure that staffing choices align with the Category Management structure. The contractor will assist in the development of staff evaluations designed to encourage performance and competency within the organization/agency. Upon completion of the restructuring the contractor shall conduct “a lessons learned” and benchmark/milestones presentation to empower the organization/agency to move forward without the need of continuing assistance or consultation.

5. Product and Service Catalogs

The contractor shall have knowledge and experience in e-sourcing and strategic sourcing, including the building of catalogs to consolidate purchasing categories and create ease of access for purchasing agencies. The Contractor shall follow the steps for category management including data and supplier analysis and the creation of an action plan designed for the implementation of organization/agency wide electronic catalog services. The contractor may assist in the development of specifications and evaluation metrics for selecting an appropriate e-catalog provider. The contractor shall also assist in the creation of data collection procedures to track catalog purchases and consolidate catalog categories.

The Contractor shall assist in the planning and implementation of a Category Management procurement process and structure. This effort including assisting in data and supplier analysis as well as the restructuring and staffing of the workforce needed to meet the need of a Category Management system. The contractor may rely on third party tools, methods and best practices to properly empower the contracted organization. All information and insights gathered including the best perceived path forward will be summarized in an action plan, the overarching document for this category that explains all necessary steps to move forward. After the delivery and acceptance of the action plan, the contractor may assist agencies in implementing the changes proposed, including, but not limited to, establishing measurements to track and grow the categories. This includes coming up with benchmarks, projecting future opportunities for efficiencies and category streamlining, creating dashboards and data analytic tools to track the progress of category spend against the benchmarks and creating supplier performance metrics to evaluate suppliers as the categories mature.

Organizations/Agencies may contract through this category for the development of a Product and Services Catalog. The catalog service can be contracted as a stand-alone service or in addition to the Category Management system. Contractors shall deliver an action plan similar to that required for Category Management outlining the steps needed to implement an online Catalog. After delivery and acceptance of the action plan, the contractor may assist in the implementation of the Product and Services Catalog including but not limited to the acquisition of required software and the rollout of the Catalog to the vendor community.

Outputs: Action Plan, Dashboards and other Data Tracking Tools, Product and Services Catalog

V. Administration of Orders

A. Ordering

Order procedures shall be mandatory for State of Hawaii Purchasing Entities as provided in the Participating Addendum and Hawaii State Procurement Office (SPO) Vendor List Contract No. 19-19, and those procedures apply in the event of conflict with this section.

1. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
2. 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.

3. 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.
4. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
5. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
6. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - a. A description of the services or supplies being delivered;
 - b. The place and requested time of delivery;
 - c. A billing address;
 - d. The name, phone number, and address of the Purchasing Entity representative;
 - e. The price per hour or other pricing elements consistent with this Master Agreement and the Contractor's proposal;
 - f. A ceiling amount of the order for services being ordered; and
 - g. The Master Agreement identifier.
7. 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.
8. 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. And all fees shall be paid, as applicable, even after the Master Agreement has been terminated or expired.

9. 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.

B. Shipping and Delivery

1. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.
2. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to notify the Purchasing Entity placing the Order immediately.
3. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

C. Services – Purchasing Entity Furnished Materials and Facilities

1. Facilities, Supplies and Services - Work may be performed at a Purchasing entity provided facility, digital or telework (offsite). Basic facilities such as work space and its associated operating requirements (i.e., phones, desks, utilities, information technology, consumable and general-purpose office supplies) may be provided while working in a Purchasing Entity facility.
2. Information - The Purchasing Entity may provide information, material and forms unique to the Purchasing Entity for supporting the task. All Purchasing Entity unique information related to a requirement, which is necessary for Contractor performance, may be made available to the Contractor. The Purchasing Entity will identify the point of contact for identification of any required information to be supplied by the Purchasing Entity.
3. Documentation - All existing documentation, relevant to a task accomplishment, may be made available to the Contractor. The Contractor will be required to prepare documentation in accordance with defined guidelines provided by the Purchasing Entity.

D. Travel

The Contractor may be required to travel in performance of orders issued under this contract.

Contractor shall be reimbursed actual cost of all travel conducted while providing the services in accordance with statements of work and respective Purchasing Entities' regulations. Allowable travel and State per diem charges will be agreed upon at the time work is requested. Thus, all travel shall be pre-approved.

The Contractor shall perform all travel necessary to accomplish the tasks contained in a task order. At a minimum, the Contractor shall be prepared to travel in conjunction with studies, contractor site visits, and to provide support at Purchasing Entity meetings. All travel requirements shall be approved in advance by the Purchasing Entity. The Contractor shall be responsible for making all travel arrangements.

Costs for transportation may be based upon mileage rates, actual costs incurred, or a combination thereof, provided the method used results in a reasonable charge. Travel costs shall be considered reasonable and allowable only to the extent that they do not exceed, on a daily basis, the maximum State per diem rates in effect at the time of the travel.

If the additional expenses are not justified and approved by the

Participating Agency, Contractor will be responsible for paying the difference.

E. Training

The Purchasing Entity may provide the Contractor with appropriate training that is directed by the Purchasing Entity and for Purchasing Entity “unique/non-commercial systems.”

F. Quality Control

The Contractor shall provide quality services/products and management oversight of all processes. The Contractor shall provide accurate data/reports and meet task order objectives, with emphasis on overall success and positive impact to the acquisition program and organizational mission. The Contractor shall provide for the management and support of personnel, to include training, guidance, and supervision of qualified personnel to accomplish the task order.

G. Laws and Regulations

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

H. Inspection and Acceptance

1. 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.
2. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the Contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
3. 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.

4. The warranty period shall begin upon Acceptance.

I. Payment

Payment after Acceptance is normally made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, 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.

J. 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 this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

K. 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.

L. 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.

VI. Labor Categories and Hourly Rates

A. Minimum Qualifications

1. Labor categories shall exhibit the following qualities:
 - a. Proficiency in MS Office (Word, Excel, PowerPoint and Outlook).
 - b. Effective oral and written communication skills.
 - c. Ability to work independently or in a team environment.
 - d. Exhibit a high degree of professionalism in the production of deliverables and in interactions with fellow employees and client personnel.
2. Selected Labor Categories are consolidations and serve multiple specialties that fulfill the needed services in the acquisition lifecycle.
3. The Minimum Qualifications are not intended to be exhaustive or all inclusive. They are intended to allow placement of appropriately skilled personnel.
4. Additional duties may also be included per Labor Categories that are not specifically listed, (i.e., Other duties as assigned).
5. Exhibit 1 provides minimum qualifications expected of each labor category when a Purchasing Entity contracts for acquisition support services.

B. Hourly Rates

1. Hourly rates are fully-burdened rates inclusive of all cost factors, (e.g. direct labor, indirect labor, G&A, and profit), excluding travel price per labor category and other Purchasing Entities' taxes, i.e. sales tax or general excise tax.
2. Hourly rates shall remain the same during the base period (two years).
3. Hourly rates, in optional periods, were allowed to be adjusted at no more than a 2% inflation rate. See Exhibit 2 for Contractor's labor category hourly rates.
4. All rates shall be guaranteed for each year as part of the Master Agreement. Requests for price adjustment, other than the adjusted price offered (See Exhibit 2), shall not be considered.

C. Off-site vs. On-site

1. Off-site means the Contractor's Place of Work
2. On-site means the Government (any state or political subdivision) Place of Work

VII. General Provisions

A. Insurance

1. 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.
2. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
 - a. 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;

- b. Automobile Liability \$1,000,000 per accident
- c. Professional Liability \$1,000,000 per claim
\$2,000,000 aggregate

Professional Liability shall be required from Contractors or subcontractors providing professional services requiring a license to conduct its business such as an engineer, architect, accountant, lawyer, information technology services etc.

Each insurance policy required by this contract (with the exception of the Professional Liability policy), including a Subcontractor's policy, shall contain the following clauses:

- 1) "The Purchasing Entity is added as an additional insured as respects to operations performed for the Purchasing Entity."
- 2) "It is agreed that any insurance maintained by the Purchasing Entity will apply in excess of, and not contribute with, insurance provided by this policy."
- d. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- e. A Waiver of Subrogation shall apply to the General Liability, Automobile Liability and Worker's Compensation insurance policies and shall be in favor of the Purchasing Entity.
- 3. 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.
- 4. 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.

5. 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.
6. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

B. Records Administration and Audit

1. 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.
2. 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.

3. 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.

C. Confidentiality, Non-Disclosure, and Injunctive Relief

1. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. 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.
2. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. 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.

3. 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.
4. 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.
5. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

D. Public Information

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

E. Assignment/Subcontracts

1. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
2. 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.

F. 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 ten (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.

G. 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.

H. Cancellation

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision 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

as a result of Contractor default may be immediate.

I. Force Majeure

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

J. Defaults and Remedies

1. The occurrence of any of the following events shall be an event of default under this Master Agreement:
 - a. Nonperformance of contractual requirements; or
 - b. A material breach of any term or condition of this Master Agreement; or
 - c. 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
 - d. 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
 - e. Any default specified in another section of this Master Agreement.
2. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
3. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- a. Exercise any remedy provided by law; and
 - b. Terminate this Master Agreement and any related Contracts or portions thereof; and
 - c. Impose liquidated damages as provided in this Master Agreement; and
 - d. Suspend Contractor from being able to respond to future bid solicitations; and
 - e. Suspend Contractor's performance; and
 - f. Withhold payment until the default is remedied.
4. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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.

K. 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.

L. 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.

M. Indemnification

1. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, 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.
2. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
 - a. 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:
 - 1) provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 2) specified by the Contractor to work with the Product; or
 - 3) 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
 - 4) It would be reasonably expected to use the Product in combination with such product, system or method.

- b.** 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. The Indemnified Party, however, 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.

N. 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.

O. Governing Law and Venue

1. 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.

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

P. 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.

Q. 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.


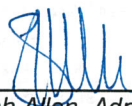
R. Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities

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

THE PARTIES HERETO HAVE EXECUTED THIS MASTER AGREEMENT

*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Lead State is relying on their representations to that effect.

<p>CONTRACTOR</p> <p>Gartner, Inc.</p> <p>By: <u>Phillip A. Cummings</u></p> <p>Title: <u>Contracts Counsel</u></p> <p>By: <u></u> *signature</p> <p>Date: <u>22 May 2019</u></p>	<p>STATE OF HAWAII</p> <p>Sarah Allen, Administrator State Procurement Office Department of Accounting and General Services</p> <p>By: <u></u> Sarah Allen, Administrator and Chief Procurement Officer</p> <p>Date: <u>10/28/19</u></p>
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APPROVED AS TO FORM:



Deputy Attorney General

Exhibit 1 – Labor Category Minimum Qualifications

LABOR CATEGORIES	
Labor Category	Minimum Qualification(s)
Program Director (Key Personnel)	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Ten or more years of progressive experience in managing significant projects and processes. • Must have the ability to manage and direct large and complex project tasks covering contract administration which may include acquisition planning, RFP/IFB preparation, market research, cost and price analysis, evaluation of performance, contract termination, and contract closeout. • Ability to research and define multiple project scopes, schedules, and targets. • Provides expert advice and guidance to agency senior level staff members. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Project Management certification • Master's Degree or higher
Program Manager	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Eight or more years of providing management for multiple projects/tasks and ongoing operational efforts • Must have the ability to provide technical knowledge on the effectiveness and efficiency of government programs. • Able to apply advanced or specialized knowledge of the nature of agency programs and activities, agency policies and objectives • Possessing the analytical and evaluative methods and techniques for assessing program development and execution. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Project Management certification • Master's Degree or higher

Exhibit 1 – Labor Category Minimum Qualifications

LABOR CATEGORIES	
Labor Category	Minimum Qualifications(s)
Subject Matter Expert III	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Fifteen (15) or more years of progressive experience and possess extensive knowledge when advising on large and high complex project/programs. • Must have the ability to analyze project requirements and develop strategic solutions and plans to meet agency's needs. • Able to provide highly technical and specialized guidance concerning solutions to complex problems. • Demonstrates executive decision-making skills and judgment. • Applies principles and methods of the subject matter to specialized solutions. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Project Management certification • Master's Degree or higher
Subject Matter Expert II	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Eight (8) or more years of progressive experience and possess extensive knowledge when advising on large and high complex project/programs. • Must have the ability to analyze project requirements and develop strategic solutions and plans to meet agency's needs. • Able to provide highly technical and specialized guidance concerning solutions to complex problems. • Demonstrates executive decision-making skills and judgment. • Applies principles and methods of the subject matter to specialized solutions. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Project Management certification • Master's Degree or higher
Subject Matter Expert I	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Five (5) or more years of progressive experience • Must have the ability to analyze project requirements and develop strategic solutions and plans to meet agency's needs. • Able to provide highly technical and specialized guidance concerning solutions to complex problems. • Applies principles and methods of the subject matter to specialized solutions. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Project Management certification • Master's Degree or higher

Exhibit 1 – Labor Category Minimum Qualifications

LABOR CATEGORIES	
Labor Category	Minimum Qualifications(s)
Acquisition Support Specialist III (Key Personnel)	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Eight (8) or more years of providing a broad range of complex acquisition management support services. • Must have the ability read and interpret each State's acquisition policy, regulations, and directives and apply those interpretations fully and legally to all activities described in the Statement of Work (SOW.) • Able to analyze cost and pricing data, assistance in proposal evaluations, and assistance in preparing contract negotiations. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Certification from a nationally recognized organization such as NCMA, UPPCC or DAU. • Master's Degree or higher in Business Administration, Business Law, or Public Administration
Acquisition Support Specialist II	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Five (5) or more years of providing a broad range of complex acquisition management support services. • Must have the ability read and interpret each State's acquisition policy, regulations, and directives and apply those interpretations fully and legally to all activities described in the Statement of Work (SOW.) • Able to analyze cost and pricing data, assistance in proposal evaluations, and assistance in preparing contract negotiations. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Certification from a nationally recognized organization such as NCM, UPPCC or DAU. • Master's Degree or higher in Business Administration, Business Law, or Public Administration
Acquisition Support Specialist I	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Three (3) or more years of providing a broad range of complex acquisition management support services. • Must have the ability read and interpret each State's acquisition policy, regulations, and directives and apply those interpretations fully and legally to all activities described in the Statement of Work (SOW.) • Able to analyze cost and pricing data, assistance in proposal evaluations, and assistance in preparing contract negotiations. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Certification from a nationally recognized organization such as NCMA, UPPCC or DAU. • Master's Degree or higher in Business Administration, Business Law, or Public Administration

Exhibit 1 – Labor Category Minimum Qualifications

LABOR CATEGORIES	
Labor Category	Minimum Qualification(s)
Analyst II	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Five (5) or more years of relevant experience in developing and applying analytic methodologies. • Ability to lead the application of analytic techniques and assist in defining the project objectives, methodologies, and principles. • Perform a wide variety of analytical tasks with the continuous improvement of processes, personnel, organization, system, or training. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Business Data Analytics Certificate, Cost Estimator/Analyst Certification, CPA License • Master's Degree
Analyst I	<p>Must have at a minimum:</p> <ul style="list-style-type: none"> • Bachelor's Degree or higher from an accredited college or university in a related field. • Three (3) or more years of relevant experience in developing and applying analytic methodologies. • Ability to lead the application of analytic techniques and assist in defining the project objectives, methodologies, and principles. • Perform a wide variety of analytical tasks with the continuous improvement of processes, personnel, organization, system, or training. <p>Preferred Qualifications</p> <ul style="list-style-type: none"> • Business Data Analytics Certificate, Cost Estimator/Analyst Certification, CPA License

GARTNER, INC.

Exhibit 2 - Hourly Labor Rates

	Base Period: Year 1 and 2		Optional Period: Year 3		Optional Period: Year 4		Optional Period: Year 5	
Labor Categories	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site
Program Director	\$ 440.01	\$ 484.01	\$ 448.81	\$ 493.69	\$ 457.78	\$ 503.56	\$ 466.94	\$ 513.63
Program Manager	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Subject Matter Expert II	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert I	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Acquisition Support Specialist II	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist I	\$ 178.23	\$ 196.05	\$ 181.80	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst II	\$ 178.23	\$ 196.05	\$ 181.81	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst I	\$ 122.53	\$ 134.79	\$ 124.98	\$ 137.48	\$ 127.48	\$ 140.23	\$ 130.03	\$ 143.04

Note:	At minimum, Contractor shall honor prices noted for each labor category, on-site or off-site, in each period.
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Definitions:	
Off-site	Offeror's Place of Work
On-site	Government (any state or political subdivision) Place of Work

Exhibit 3 - SAMPLE NASPO VALUEPOINT DETAILED SALES DATA REPORT

Field Name		Field Description
VENDOR NAME		The awarded Contractor's name
VENDOR CONTRACT NUMBER		Lead State assigned contract number (using Lead State's numbering protocol)
STATE		State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)		State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME		Customer (agency) Bill to name
BILL TO ADDRESS		Customer (agency) Bill to address
BILL TO CITY		Customer (agency) Bill to city
BILL TO ZIPCODE		Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER		Vendor assigned order number
CUSTOMER PO NUMBER		Customer provided Purchase Order Number
CUSTOMER NUMBER		Vendor assigned account number for the purchasing entity
ORDER TYPE		Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)		(mm/dd/ccyy)
INVOICE DATE		(mm/dd/ccyy)
INVOICE NUMBER		Vendor assigned Invoice Number
CATEGORY NUMBER		Category number of purchased services
CATEGORY DESCRIPTION		Description of purchased services
LABOR CATEGORY		Title of Labor Category
NASPO ValuePoint PRICE		NASPO ValuePoint Price- US Currency (\$99999.999) - Labor category hourly price
NUMBER OF HOURS		Total number of hours
TOTAL PRICE		Extended Price (hourly price multiplied by the hours invoiced) - US Currency (\$999999999.999)
NASPO ValuePoint ADMIN FEE		Administrative Fee based on Total Price - US Currency (\$999999.999)

Exhibit 3 - SAMPLE NASPO VALUEPOINT DETAILED SALES DATA REPORT

Contractor:

Quarter:

☐ No Quarterly Sales

Vendor Name	Vendor Contract Number	State	Customer Type	Bill to Name	Bill to Address	Bill to City	Bill to Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Invoice Date	Invoice Number	Category Number	Category Description	Labor Category	NASPO ValuePoint Labor Category Price	Number of Hours	Total Price	Admin Fee
Ameda, Inc.	CA-12345	CA	Local Gov't	A37565	COUNTY 725 EAST SA	SAN JOSE	95126	Sales Order #40356934	A37565		Invoice	3/3/2017	3/17/2017	21326	Category One	Specifications /Scope of Work Review	Acquisition Support Specialist III	\$400.00	50	\$20,000.00	\$50.00
Ameda, Inc.	CA-12345	CA	K-12	A73613	STAT PO BOX 9973	SACRAMENT	00009-5899	Sales Order #- 16-PO-00515	A73613		Invoice	3/2/2017	3/17/2017	21328	Category Five	Cost & Pricing Analysis	Analyst II	\$500.00	55	\$27,500.00	\$68.75

GARTNER, INC.

Exhibit 2 - Hourly Labor Rates

	Base Period: Year 1 and 2		Optional Period: Year 3		Optional Period: Year 4		Optional Period: Year 5	
Labor Categories	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site
Program Director	\$ 440.01	\$ 484.01	\$ 448.81	\$ 493.69	\$ 457.78	\$ 503.56	\$ 466.94	\$ 513.63
Program Manager	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Subject Matter Expert II	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert I	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Acquisition Support Specialist II	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist I	\$ 178.23	\$ 196.05	\$ 181.80	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst II	\$ 178.23	\$ 196.05	\$ 181.81	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst I	\$ 122.53	\$ 134.79	\$ 124.98	\$ 137.48	\$ 127.48	\$ 140.23	\$ 130.03	\$ 143.04

Note:	At minimum, Contractor shall honor prices noted for each labor category, on-site or off-site, in each period.
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Definitions:	
Off-site	Offeror's Place of Work
On-site	Government (any state or political subdivision) Place of Work



**Procurement of Acquisition Support
Services (PASS)**

Led by the State of **Hawaii**

Master Agreement #: 19-19-06 (*hereinafter "Master Agreement"*)

Contractor: **Gartner, Inc.** (*hereinafter "Contractor"*)

Lead State: **STATE OF HAWAII** (*hereinafter "Lead State"*)

Amendment #1 of Master Agreement (Master Agreement #19-19-06) for Procurement of Acquisition Support Services (PASS), is made and entered into by and between the Lead State acting by and through the Department of Accounting and General Services, State Procurement Office, a State of Hawaii governmental agency ("State") on behalf of the NASPO ValuePoint Cooperative Purchasing Program.

AGREEMENT

1. Amendment – Term of the Master Agreement. The Master Agreement has a base period of two (2) years and shall terminate unless it is extended. Per the term of the Master Agreement, the Master Agreement may be extended for up to three (3) additional 12-month periods or parts thereof at the Lead State's discretion, by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor Performance. The Lead State has made the determination and chooses to exercise the first 12-month optional period to extend the Master Agreement from June 6, 2021 to June 5, 2022.
2. Amendment – Hourly Rates:
 - a. Per the Master Agreement, all labor category rates must be guaranteed for the initial term and additional years of the Master Agreement.
 - b. Hourly rates in optional periods were allowed to be adjusted at no more than a 2% inflation rate. See Exhibit 2 for rates for Year 3 applicable to this amendment and extension period.
 - c. All rates shall be guaranteed for each year as part of the Master Agreement. Requests for price adjustment, other than the adjusted price offered shall not be considered.
3. Amendment - Special Provisions for Purchases During Declared Disaster: The attached Exhibit A, Required FEMA Disaster Provisions are made part of this addendum under this Agreement. FEMA requires certain provisions to receive reimbursement.

NASPO ValuePoint
AMENDMENT #1
MASTER AGREEMENT



**Procurement of Acquisition Support
Services (PASS)**

Led by the State of **Hawaii**

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4. Amendment – Business Address Change: Address for Gartner, Inc. is changed from 980 9th Street, Suite 2150, Sacramento CA 95814 to 1201 Wilson Blvd, 17th Floor, Arlington, VA 22209.
-

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES WITH FULL KNOWLEDGE OF AND AGREEMENT WITH ITS TERMS AND CONDITIONS.

CONTRACTOR: Gartner, Inc.	LEAD STATE: State of Hawaii
Signature: <i>Phillip A. Cummings</i>	Signature:
Name: Phillip A. Cummings	Name: Bonnie Kahakui, Department of Accounting Services, State Procurement Office
Title: Contracts Counsel	Title: Acting Administrator
Date: 05/18/2021	Date: 05/28/2021

APPROVED AS TO FORM:

Stella M. Kam

Deputy Attorney General

GARTNER, INC.

Exhibit 2 - Hourly Labor Rates

	Base Period: Year 1 and 2		Optional Period: Year 3		Optional Period: Year 4		Optional Period: Year 5	
Labor Categories	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site
Program Director	\$ 440.01	\$ 484.01	\$ 448.81	\$ 493.69	\$ 457.78	\$ 503.56	\$ 466.94	\$ 513.63
Program Manager	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Subject Matter Expert II	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert I	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Acquisition Support Specialist II	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist I	\$ 178.23	\$ 196.05	\$ 181.80	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst II	\$ 178.23	\$ 196.05	\$ 181.81	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst I	\$ 122.53	\$ 134.79	\$ 124.98	\$ 137.48	\$ 127.48	\$ 140.23	\$ 130.03	\$ 143.04

Note:	At minimum, Contractor shall honor prices noted for each labor category, on-site or off-site, in each period.
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Definitions:	
Off-site	Offeror's Place of Work
On-site	Government (any state or political subdivision) Place of Work

SPECIAL PROVISIONS

(REQUIRED FEMA DISASTER PROVISIONS)

1. Administrative, Contractual, or Legal Remedies

For all contracts greater or equal to \$150,000, which is the current Simplified Acquisition Threshold set by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council pursuant to 41 U.S.C. § 1908, Contractor agrees to be bound by the administrative, contractual, or legal remedies set forth in the State of Hawaii, General Conditions (AG-008), which govern contractors' violation or breach of contract terms and appropriate sanctions and penalties.

2. Termination for Cause and for Convenience

For all contracts in excess of \$10,000, Contractor agrees to be bound by the termination for cause and for convenience provisions set forth in the State of Hawaii, General Conditions (AG-008).

3. Equal Employment Opportunity

If this contract is for construction, Contractor agrees, pursuant to the requirements provided in 2 C.F.R. Part 200, Appendix II, and 41 C.F.R. § 60-1.4(b), as follows:

(A) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(D) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 [Part I - Nondiscrimination in Government Employment; Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors; Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts], and the rules, regulations, and relevant orders of the Secretary of Labor.

(F) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(H) Contractor also agrees to include the following language in every subcontract or purchase order (unless exempted by rules, regulations, or orders of

the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965), followed by the provisions of subparagraphs (A) through (G) in this paragraph 3, so that such provisions will be binding upon each subcontractor or vendor.

Contractor shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance or guarantee, the following equal opportunity clause:

[followed by Subsections (A) through (G)]

Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Davis-Bacon Act

If the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, is applicable to this contract, Contractor agrees to comply with all provisions of the Davis-Bacon Act and shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Contractor also agrees to pay wages not less than once a week. Contractor accepts the current prevailing wage determination issued by the federal Department of Labor. Contractor also agrees to comply with the Copeland "Anti Kickback" Act, 40 U.S.C. § 3145 and Department of Labor regulations, 29 C.F.R. Part 3, and shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State shall report all suspected or reported violations of the Copeland Anti Kickback Act to FEMA.

To the extent applicable, Contractor's subcontracts shall also require subcontractor to comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, the Copeland Anti Kickback Act, 40 U.S.C. § 3145, and 29 C.F.R. Part 3, and Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

5. Contract Work Hours and Safety Standards Act

If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor agrees to comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708, and the accompanying Department of Labor regulations, 29 C.F.R. Part 5. Contractor, pursuant to 40 U.S.C. § 3702, shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the Contractor shall compensate the worker at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. If this contract includes construction work, Contractor shall not require any laborer or mechanic performing work under this contract to perform such work in surroundings or under working conditions which are unsanitary, hazardous or dangerous, provided however, that such requirements shall not apply for purchases of supplies or materials or of articles ordinarily available on the open market, or for contracts for transportation.

6. Clean Air Act and Federal Water Pollution Control Act

Contractor agrees to comply with paragraph 40 (Pollution Control) of the State of Hawaii, General Conditions (AG-008), and all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387, and will report violations to FEMA and the Regional office of the Environmental Protection Agency.

7. Energy Efficiency

To the extent applicable to this contract, Contractor agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State.

8. Excluded Parties List System

Contractor understands and agrees that if Contractor is listed on the government-wide Excluded Parties List System in the System for Award Management at www.SAM.gov as suspended or debarred, Contractor cannot be awarded this contract.

9. Byrd Anti-Lobbying Amendment

If this contract is for an award of \$100,000 or more, Contractor shall file a written declaration with the State agency identified as the contracting agency for this project certifying that Contractor has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Included within the written declaration shall be the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor with respect to this contract. Contractor also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

10. Recovered and Recycled Materials

To the extent applicable to this contract, Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires Contractor to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.F.R. part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.



**Procurement of Acquisition Support
Services (PASS)**

Led by the State of **Hawaii**

Master Agreement #: 19-19-06 (*hereinafter "Master Agreement"*)

Contractor: **Gartner, Inc.** (*hereinafter "Contractor"*)

Lead State: **STATE OF HAWAII** (*hereinafter "Lead State"*)

Amendment #2 of Master Agreement (Master Agreement #19-19-06) for Procurement of Acquisition Support Services (PASS), is made and entered into by and between the Lead State acting by and through the Department of Accounting and General Services, State Procurement Office, a State of Hawaii governmental agency ("State") on behalf of the NASPO ValuePoint Cooperative Purchasing Program.

AGREEMENT

1. Amendment – Term of the Master Agreement. The Master Agreement has a base period of two (2) years and shall terminate unless it is extended. Per the term of the Master Agreement, the Master Agreement may be extended for up to three (3) additional 12-month periods or parts thereof at the Lead State's discretion, by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor Performance. The Lead State has made the determination and chooses to exercise the second 12-month optional period to extend the Master Agreement from June 6, 2022 to June 5, 2023.
2. Amendment – Hourly Rates:
 - a. Per the Master Agreement, all labor category rates must be guaranteed for the initial term and additional years of the Master Agreement.
 - b. Hourly rates in optional periods were allowed to be adjusted at no more than a 2% inflation rate. See Exhibit 2 for rates for Year 4 applicable to this amendment and extension period.
 - c. All rates shall be guaranteed for each year as part of the Master Agreement. Requests for price adjustment, other than the adjusted price offered shall not be considered.

NASPO ValuePoint
AMENDMENT #2
MASTER AGREEMENT



**Procurement of Acquisition Support
Services (PASS)**
Led by the State of Hawaii

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT THROUGH THEIR
DULY AUTHORIZED REPRESENTATIVES WITH FULL KNOWLEDGE OF AND
AGREEMENT WITH ITS TERMS AND CONDITIONS.

CONTRACTOR: Gartner, Inc.	LEAD STATE: State of Hawaii
Signature: <i>Philip A. Cummings</i>	Signature: <i>Bonnie A. Kahakui</i>
Name: Philip A. Cummings	Name: Bonnie Kahakui, Department of Accounting and General Services, State Procurement Office
Title: Contracts Counsel	Title: Acting Administrator
Date: 03/29/2022	Date: 04/25/2022

APPROVED AS TO FORM:

Stella M. Kam

Deputy Attorney General

GARTNER, INC.

Exhibit 2 - Hourly Labor Rates

	Base Period: Year 1 and 2		Optional Period: Year 3		Optional Period: Year 4		Optional Period: Year 5	
Labor Categories	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site
Program Director	\$ 440.01	\$ 484.01	\$ 448.81	\$ 493.69	\$ 457.78	\$ 503.56	\$ 466.94	\$ 513.63
Program Manager	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Subject Matter Expert II	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
Subject Matter Expert I	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist III	\$ 406.59	\$ 447.25	\$ 414.72	\$ 456.19	\$ 423.02	\$ 465.32	\$ 431.48	\$ 474.62
Acquisition Support Specialist II	\$ 211.65	\$ 232.81	\$ 215.88	\$ 237.47	\$ 220.20	\$ 242.22	\$ 224.60	\$ 247.06
Acquisition Support Specialist I	\$ 178.23	\$ 196.05	\$ 181.80	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst II	\$ 178.23	\$ 196.05	\$ 181.81	\$ 199.98	\$ 185.43	\$ 203.97	\$ 189.14	\$ 208.05
Analyst I	\$ 122.53	\$ 134.79	\$ 124.98	\$ 137.48	\$ 127.48	\$ 140.23	\$ 130.03	\$ 143.04

Note:	At minimum, Contractor shall honor prices noted for each labor category, on-site or off-site, in each period.
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Definitions:	
Off-site	Offeror's Place of Work
On-site	Government (any state or political subdivision) Place of Work



**Procurement of Acquisition Support
Services (PASS)**

Led by the State of Hawaii

Master Agreement #: 19-19-06 (*hereinafter "Master Agreement"*)

Contractor: **Gartner, Inc.** (*hereinafter "Contractor"*)

Lead State: **STATE OF HAWAII** (*hereinafter "Lead State"*)

Amendment #3 of Master Agreement (Master Agreement #19-19-06) for Procurement of Acquisition Support Services (PASS), is made and entered into by and between the Lead State acting by and through the Department of Accounting and General Services, State Procurement Office, a State of Hawaii governmental agency ("State") on behalf of the NASPO ValuePoint Cooperative Purchasing Program.

AGREEMENT

1. Amendment- Term of the Master Agreement. The Master Agreement has a base period of two (2) years and shall terminate unless it is extended. Per the term of the Master Agreement, the Master Agreement may be extended for up to three (3) additional 12-month periods or parts thereof at the Lead State's discretion, by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor Performance. The Lead State has made the determination and chooses to exercise the third 12-month optional period to extend the Master Agreement from June 6, 2023 to June 5, 2024.
2. Amendment - Hourly Rates:
 - a. Per the Master Agreement, all labor category rates must be guaranteed for the initial term and additional years of the Master Agreement.
 - b. Hourly rates in optional periods were allowed to be adjusted at no more than a 2% inflation rate. See Exhibit 2 for rates for Year 5 applicable to this amendment and extension period.
 - c. All rates shall be guaranteed for each year as part of the Master Agreement. Requests for price adjustment, other than the adjusted price offered shall not be considered.

NASPO ValuePoint
AMENDMENT #3
MASTER AGREEMENT



**Procurement of Acquisition Support
Services (PASS)**

Led by the State of **Hawaii**

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES WITH FULL KNOWLEDGE OF AND AGREEMENT WITH ITS TERMS AND CONDITIONS.

CONTRACTOR: Gartner, Inc.	LEAD STATE: State of Hawaii
Signature: <i>Phillip A. Cummings</i>	Signature: <i>Bonnie A. Kahakui</i>
Name: Phillip A. Cummings	Name: Bonnie Kahakui, Department of Accounting and General Services, State Procurement Office
Title: VP - Contracts Counsel	Title: Acting Administrator
Date: 12/09/2022	Date: 03/30/2023

APPROVED AS TO FORM:

Stella M. Kam

12/22/2022

Deputy Attorney General

GARTNER, INC.

Exhibit 2 - Hourly Labor Rates

Labor Categories	Base Period: Year 1 and 2		Optional Period: Year 3		Optional Period: Year 4		Optional Period: Year 5	
	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site	Fully Burdened Hourly Rate - Off-site	Fully Burdened Hourly Rate - On-site
Program Director	\$ 440.01	\$ 484.01	\$ 448.81	\$ 493.69	\$ 457.78	\$ 503.56	\$ 466.94	\$ 513.63
Program Manager	\$ 339.75	\$ 373.73	\$ 346.55	\$ 381.20	\$ 353.48	\$ 388.83	\$ 360.55	\$ 396.60
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Note:	At minimum, Contractor shall honor prices noted for each labor category, on-site or off-site, in each period.
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Definitions:	
Off-site	Offeror's Place of Work
On-site	Government (any state or political subdivision) Place of Work



ELECTION TO PARTICIPATE FORM

COSTARS PROGRAM

If awarded a Contract, our firm agrees to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to registered COSTARS Members who elect to participate in the contract.


Our firm also agrees to pay the applicable Administrative Fee at the beginning of each contract year and/or upon each contract renewal date:

\$166 for a Department of General Services-verified Small Diverse Business or
Small, Veteran Business Enterprise

\$500 for a Department of General Services Self-Certified Small Business

\$1,500 for all other businesses

***If you are a Department of General Services Self-Certified Small Business or
Department of General Services-verified Small Diverse Business,
you must submit a copy of your active Small Business Contracting Program
certificate with your bid response.***

Corporate or Legal Entity Name:	Gartner, Inc.
Signature:	DocuSigned by:  <small>38838E34258B4E6...</small>
Date:	June 29, 2023
Contract Description:	PA DOS SURE-Vote PMQA



IRAN FREE PROCUREMENT CERTIFICATION FORM

(Pennsylvania's Procurement Code Sections 3501-3506, 62 Pa.C.S. §§ 3501-3506)

To be eligible for an award of a contract with a Commonwealth entity for goods or services worth at least \$1,000,000 or more, a vendor must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services ("DGS") pursuant to Section 3503 of the Procurement Code **and** is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e).

To comply with this requirement, please insert your vendor or financial institution name and complete **one** of the options below. Please note: Pennsylvania law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Section 3503 of the Procurement Code.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS **and** is eligible to contract with the Commonwealth of Pennsylvania Sections 3501-3506 of the Procurement Code.

<i>Vendor Name/Financial Institution (Printed)</i> Gartner, Inc.	
<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px; margin-right: 5px;">DocuSigned by:</div> <div style="text-align: center;"> <small>38838F34258B4E6</small> </div> </div>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i> Melissa McKay, Manager	<i>Date Executed</i> June 29, 2023

OPTION #2 – EXEMPTION

Pursuant to Procurement Code Section 3503(e), DGS may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to enter into a contract for goods and services.

If you have obtained a written exemption from the certification requirement, please fill out the information below, and attach the written documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee's compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

DocuSigned by:	
	June 29, 2023
<i>Signature</i>	<i>Date</i>
Melissa McKay	
<i>Name (Printed)</i>	
Manager	
<i>Title of Certifying Official (Printed)</i>	
Gartner, Inc.	
<i>Contractor/Grantee Name (Printed)</i>	



pennsylvania
DEPARTMENT OF GENERAL SERVICES
BUREAU OF PROCUREMENT

LOBBYING CERTIFICATION FORM

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, which can be found at:

<https://www.gsa.gov/Forms/TrackForm/33144>

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

SIGNATURE:  38838E34258B4E6...

TITLE: Manager DATE: June 29, 2023