

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
FASTENAL COMPANY**

This Linking Agreement (“Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025, between the City of Glendale, an Arizona municipal corporation (“City”), and Fastenal Company, a Minnesota corporation, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

**RECITALS**

- A. On December 9, 2024, the State of Arizona, a member of the NASPO ValuePoint, entered into a contract with Contractor to purchase the goods and services described in State of Arizona Participating Addendum Contract No. CTR074591 to Facilities (MRO) and Industrial Supplies NASPO Master Contract No. MA 758 2500000414 (“Cooperative Agreement”), which is attached hereto as **Exhibit A**. The Cooperative Agreement allows its cooperative use by other governmental agencies, including the City.
- B. Section 2-149 of the City’s Procurement Code permits the Finance Director to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Finance Director may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City wishes to contract with Contractor for supplies or services identical to those being provided to other units of government under the Cooperative Agreement. Contractor consents to the City’s cooperative use of the terms and conditions of the Cooperative Agreement, and agrees to provide the supplies and services set forth in the Statement of Work appended hereto as **Exhibit B**.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement.
  - A. As provided in the Cooperative Agreement, purchases can be made by governmental entities from the date of award, which was January 1, 2025, until the date the contract terminates on August 31, 2026, unless the term is extended by mutual agreement of the parties to the Cooperative Agreement. The Cooperative Agreement, however, may not be extended beyond August 31, 2030. The initial period of this Agreement is the period from the Effective Date of this Agreement until August 31, 2026.
  - B. The City may extend the term of this Agreement for four (4) additional one-year (1) extensions if the Cooperative Agreement is likewise extended and the City gives the Contractor notice that it is exercising its option to extend this Agreement 30 days prior to

the anniversary of the Effective Date. Glendale extensions are not automatic and shall only occur if the City affirmatively exercises its right to extend this Agreement.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as **Exhibit B**.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as **Exhibit C**.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed four hundred thousand dollars (\$400,000) for the entire term of the Agreement (initial term plus any extensions).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. Uyghur Forced Labor Prevention Act (UFLPA). Contractor certifies that it does not currently, and during the term of this Agreement, will not use:

- a. the forced labor of ethnic Uyghurs in the People's Republic of China;
- b. any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and
- c. any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

10. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
11. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale  
c/o Lindsay Lucas  
7070 W. Northern Avenue  
Glendale, AZ 85303

and

Fastenal Company  
2001 Theurer Blvd.  
Winona, MN 55987

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

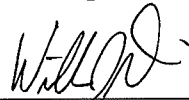
“City”

City of Glendale, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Kevin R. Phelps  
City Manager

“Contractor”

Fastenal Company,  
a Minnesota corporation

By:   
Name: William Drazkowski  
Title: Executive Vice President

ATTEST:


\_\_\_\_\_  
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
FASTENAL COMPANY**


**EXHIBIT A  
STATE OF ARIZONA PARTICIPATING ADDENDUM ADDENDUM CONTRACT NO.  
CTR074591 TO FACILITIES (MRO) AND INDUSTRIAL SUPPLIES NASPO MASTER  
CONTRACT NO. MA 758 250000414**

	<b>State of Arizona Participating Addendum</b>	Arizona Department of Administration State Procurement Office
	Contract No.: CTR074591	
	Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies	

CONTRACTOR IS STRONGLY ENCOURAGED TO READ THE ENTIRE CONTRACT.

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	<b>State of Arizona Participating Addendum</b>	Arizona Department of Administration State Procurement Office
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### Scope of Work and Participation

#### 1. Purpose and Background


- 1.1. Master Agreement Name and Number: NASPO ValuePoint Contract MA 758 2500000414 for Facilities Maintenance, Repair, and Operations (MRO) and Industrial Supplies.
- 1.2. Contractor: Fastenal Company
- 1.3. Participating Entity: State of Arizona
- 1.4. Purpose: Establish a master agreement for the procurement of Facilities Maintenance, Repair, and Operations (MRO) and Industrial Supplies under the awarded categories contained in subject Master Agreement..
- 1.5. Legal Authority: In accordance with Arizona Revised Statutes (A.R.S.) § 41-2632, and Arizona Administrative Code (A.A.C.) R2-7-1003, Purchasing from a Cooperative Contract, State establishes this contract with Fastenal Company to provide the materials or services described herein.
- 1.6. Participation: This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Arizona and Contractor for materials. This Participating Addendum may be used by all State Agencies (Eligible Agencies) as well as members of the State of Arizona Purchasing Cooperative (Co-Op Buyers).
- 1.7. Term: This Participating Addendum shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

#### 2. Primary Contacts

- 2.1. Primary Contacts: The following (or their named successors) are the primary contact individuals for this Participating Addendum:

##### 2.1.1. Contractor Primary Contact:

Name:	Bill Franssen
Address:	1030S 9 <sup>th</sup> Street, Louisville, KY 40203
Telephone:	757-342-6123
Email:	<a href="mailto:wfransse@fastenal.com">wfransse@fastenal.com</a>

	<b>State of Arizona Participating Addendum</b>	Arizona Department of Administration State Procurement Office
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2.1.2. Participating Entity Primary Contact:

Name:	Selena Leon
Address:	1400 W Washington St., Suite 3100 Phoenix, AZ 85007
Telephone:	602-542-1788
Email:	<a href="mailto:Selena.leon@azdoa.gov">Selena.leon@azdoa.gov</a>

**3. Participating Addendum Modifications to the Master Agreement**

3.1. Participating Addendum Changes to Master Agreement:

3.1.1. This Participating Addendum incorporates the entire Master Agreement, including terms and conditions therein, as applied to the Participating Entity and Contractor, with the limitations, modifications, and additions described in this Section 3 of the Contract Scope of Work (Participating Addendum Modifications to the Master Agreement).

3.1.2. Any limitations, modifications, or additions specified herein shall apply only to the agreement and relationship between Participating Entity and Contractor and shall not amend or affect other participating addenda or the Master Agreement itself.

3.2. Definitions

3.2.1. "Contract" For the purpose of this Participating Addendum, the term Contract refers to the Master Agreement, as defined therein and as modified by this Participating Addendum, and any Amendments to either the Master Agreement or the Participating Addendum.

3.3. Order of Precedence

3.3.1. The following attachments are hereby incorporated into this State of Arizona Participating Addendum (PA):


3.3.1.1. Attachment A, Parts 1 and 2 – Special Terms and Conditions and Uniform Terms and Conditions, collectively;

3.3.1.2. Attachment B – Boycott of Israel Disclosure; and

3.3.1.3. Attachment C – Forced Labor of Ethnic Uyghurs Ban

3.3.2. Master Contract and Participating Addendum Order of Precedence:

3.3.2.1. State of Arizona Participating Addendum;


	<b>State of Arizona Participating Addendum</b>	Arizona Department of Administration State Procurement Office
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3.3.2.2. Master Agreement;

3.3.2.3. Master Agreement Solicitation including all Addenda; and

3.3.2.4. Contract Vendors response to the Master Agreement Solicitation.

**3.4.** Orders: Any Order placed by a Participating Entity, Eligible Agency, or Co-Op Buyer for a Material or Service offered through this Participating Addendum shall be deemed to be a sale under, and subject to the pricing and other terms and conditions of, the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to the order.

	<b>State of Arizona Participating Addendum</b>	Arizona Department of Administration State Procurement Office
	Contract No.: CTR074591	
	Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies	

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

**Fastenal Company**

Contractor company name
2001 Theurer Blvd.
Address
Winona, MN 55987
City, State, ZIP

 Signature of person authorized to sign Contract
William Drazkowski, Executive Vice President
Printed name and title
Bill Franssen, Director Government Sales
Contact name and title
wfransse@fastenal.com      757-342-6123
Contact email address      Contact phone number

**CERTIFICATION:** By signature in the above, Contractor certifies that it:

- Will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order Nos. 2023-09, 2023-01, 2009-9, and A.R.S. §§ 41-1461 through 41-1465;
- Has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract; failure to provide a valid signature affirming the stipulations required by this clause may void the Contract;
- Has not signed the Contract with a false statement, which will void the Contract and may subject Contractor to legal penalties under law;
- Complies with A.R.S. § 18-132 when offering electronics or information technology products, services, or maintenance;
- Did not and will not involve collusion or other anti-competitive practices; and
- Is not debarred from, or otherwise prohibited from, participating in any contract awarded by any federal entity, or state or local government.


**CONTRACT EXECUTION BY PROCUREMENT AUTHORITY**

The Contractor is now bound to sell the Materials or Services listed in the attached Contract, including all terms, conditions, and specifications as stated herein. The Contract shall henceforth be referred to as Contract No. CTR074591 with an effective date of 01/01/2025. The Contractor is cautioned not to commence any billable work or to provide any Material or Service under this Contract until Contractor receives an Order or written notice to proceed from the State.

State of Arizona Contract Executed this 9th day of December 2024

**Selena Leon** Digitally signed by Selena Leon  
Date: 2024.12.09 15:16:25 -07'00'

Authorized Procurement Officer signature

	<b>Attachment A, Part 1: Special Terms and Conditions</b>	Arizona Department of Administration State Procurement Office
	Contract No.: CTR074591	
	Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies	


### Attachment A, Part 1: Special Terms and Conditions

The Special Terms and Conditions modify the Uniform Terms and Conditions. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

**1.0 Definition of Terms:** As used in the Contract, the terms listed below are defined as follows:

- 1.1 Arizona Procurement Code: The Arizona Procurement Code consists of Arizona Revised Statutes (A.R.S.) §§ 41-2501 *et seq.* and Arizona Administrative Code (A.A.C.) R2-7-101 *et seq.*
- 1.2 Attachment: means any document titled “Attachment” incorporated into the State of Arizona Participating Addendum.
- 1.3 Arizona Transaction Privilege Tax (TPT): For information, refer to the Arizona Department of Revenue (DOR) website at: <https://azdor.gov/transaction-privilege-tax-tpt>
- 1.4 Contract: For the purpose of this Participating Addendum, the term Contract refers to the Master Agreement, as defined therein and as modified by this Participating Addendum, and any Amendments to either the Master Agreement or the Participating Addendum.
- 1.5 Contract Terms and Conditions: The Special Terms and Conditions and the Uniform Terms and Conditions taken collectively.
- 1.6 Contractor: The entity identified on the State of Arizona Participating Addendum signature block who has entered into the Contract with the State.
- 1.7 Contractor Indemnitor: Contractor or any of its owners, officers, directors, agents, employees, or Subcontractors.
- 1.8 Co-Op Buyer: A member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing an “eligible procurement unit” under A.A.C. R2-7-101(23).

*NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also*


	<b>Attachment A, Part 1: Special Terms and Conditions</b>	Arizona Department of Administration State Procurement Office
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*available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under Section 501(c)(3) through 501(c)(6) of the tax code.*

**1.9 Eligible Agency:**

- 1.9.1 If the Special Terms and Conditions indicate that the Contract is a “single-agency” contract, then “Eligible Agency” means the particular State of Arizona agency, university, commission, or board identified therein.
- 1.9.2 If the Special Terms and Conditions indicate that the Contract is a mandatory statewide contract, then “Eligible Agency” means any State of Arizona department, agency, university, commission, or board.
- 1.9.3 If the Special Terms and Conditions indicate that the Contract is a “cooperative” contract available for use by Co-Op Buyers, then “Eligible Agency” means any State of Arizona department, agency, university, commission, board, or any Co-Op Buyer.

- 1.10 **Exhibit:** means any document titled “Exhibit” incorporated into the Contract or placed in the Exhibits section of the Contract generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
- 1.11 **Master Agreement:** Master Agreement refers to the Master Agreement Name and Number listed in section 1.1 of the Scope of Work and Participation Section of the Participating Addendum in its entirety, including any Amendments to the Master Agreement.
- 1.12 **Order:** The instrument by which the Eligible Agency or Co-Op Buyer authorizes a Contractor to perform some or all of the Work. Whether the Contract will have one Order or many Orders depends on the scope of the Contract and how the State will use it. The Special Terms and Conditions provide that information. Any of the following are construed as an “Order”: “Purchase order,” “task order,” “service order,” or “job order”.
- 1.13 **The State’s eProcurement System:** The State’s official electronic procurement system, established pursuant to A.A.C. R2-7-201 as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, The State’s eProcurement System–The Official State eProcurement System. Technical Bulletin No. 020 is available online at:


	<b>Attachment A, Part 1: Special Terms and Conditions</b>	Arizona Department of Administration State Procurement Office
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[https://spo.az.gov/sites/default/files/documents/files/TB\\_020\\_APP\\_20181024.pdf](https://spo.az.gov/sites/default/files/documents/files/TB_020_APP_20181024.pdf)

- 1.14 State: With respect to the Contract generally, “State” means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, “State” means each Eligible Agency or Co-Op Buyer who has issued the Order.
- 1.15 State Indemnitees: Collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.
- 1.16 Participating Addendum: Participating Addendum refers to this agreement, including any Exhibits, Supplements, and Attachments to this agreement, between the State and Contractor to modify the Master Agreement as described herein.
- 1.17 Work: The totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Contractor's obligations and duties under the Contract in conformance with the Contract and applicable laws.

## 2.0 Contract Interpretations

- 2.1 Usage. Where the Contract:
  - 2.1.1 assigns obligations to Contractor, any reference to “Contractor” is to be construed to be a reference to the Contractor and all Subcontractors, whether they are first-tier Subcontractors, sub-subcontractors, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Contractor’s and the Subcontractor’s respective agents, representatives, and employees in every instance unless the context plainly requires that it is a reference only to Contractor as apart from Subcontractors.
  - 2.1.2 uses the permissive “may” with respect to a party’s actions, determinations, etc., the terms is to be interpreted as in A.A.C. R2-7-101(32) [*Definitions*]. For clarity of intent, any right given to State using “State may” or a like construction denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that: (a) where written “may, at its discretion,” the discretion extends to whatever is most advantageous to State; and (b) where written only as “may,” the discretion is constrained by what is fair,

	<b>Attachment A, Part 1: Special Terms and Conditions</b>	Arizona Department of Administration State Procurement Office
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reasonable, and as accommodating of the respective best interests of both parties as practicable under the circumstances;

- 2.1.3 uses the imperative “shall” with respect to a party’s actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(44) [*Definitions*]. Conversely, the phrase “shall not” is to be interpreted as an imperative prohibition.
- 2.1.4 uses the term “must” with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity;
- 2.1.5 uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; and
- 2.1.6 uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.

**2.2 Contract Order of Precedence**

- 2.2.1 **Complementary Documents.** All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the Work as though the relevant Work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
- 2.2.2 **Conflicts.** In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document, but not in another, is not to be considered a conflict or inconsistency.
  - 2.2.2.1 **State of Arizona Participating Addendum, including all Attachments and Exhibits, in the following order:**
    - 2.2.2.1.1 **Special Terms and Conditions, as modified by Supplements to the Special Terms and Conditions;**
    - 2.2.2.1.2 **Exhibits to the Special Terms and Conditions;**
    - 2.2.2.1.3 **Uniform Terms and Conditions;**



## Attachment A, Part 1: Special Terms and Conditions

Contract No.: CTR074591

Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies

Arizona Department of  
Administration  
State Procurement Office

- 2.2.2.1.4 Participating Addendum Scope of Work;
- 2.2.2.1.5 Exhibits to the Participating Addendum Scope of Work;
- 2.2.2.1.6 Participating Addendum Specifications; and
- 2.2.2.1.7 Any other documents referenced or included in the Participating Addendum.

2.2.2.2 Master Agreement, including all Addenda, in the order of precedence stated therein; and

2.2.2.3 Orders, in reverse chronological order.

### 3.0 Contract Administration and Operation

3.1 **Term of Contract.** The term of the Contract will commence on the date indicated in the State of Arizona Participating Addendum signature block and continue for **two (2) years** unless canceled, terminated, or permissibly extended.


3.2 **Contract Extensions.** State may, at its discretion, request for a mutual agreement to extend the initial Contract term in increments of **one (1) or more months** and do so one or more times, provided that the maximum aggregate term of the Contract including extensions cannot exceed the maximum aggregate term of **six (6) years**.

3.3 **Notices and Correspondence**

3.3.1 **To Contractor.** State shall address all Contract correspondence other than formal notices to the email address indicated as “Default for Type” for “General Mailing Address” in Contractor’s corresponding State’s eProcurement System Vendor Profile; and address any required notices to Contractor to the “Contact Name and Title” at the “Mailing Address” indicated on the Accepted Offer, as that address might have been amended during the term of the Contract.

3.3.2 **To State.** Contractor shall address all Contract correspondence other than formal notices to the email address indicated in “Contact Instructions” in the State’s eProcurement System Summary for State; and address any required notices to State via email to the Procurement Officer identified as “Purchaser” in the State’s eProcurement System and via mail to the following mailing address:

**Arizona Department of Administration  
State Procurement Office  
1400 W Washington St, #300,**

	<b>Attachment A, Part 1: Special Terms and Conditions</b>	Arizona Department of Administration State Procurement Office
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Phoenix, AZ 85007

3.3.3 Changes. State may change the designated Procurement Officer, update contact information, or change the applicable mailing address.

3.4 Signing of Contract Amendments. Contractor’s counter-signature (or “approval” in the State’s eProcurement System, in the case of an amendment) is not required to give effect if the Contract Amendment only covers either:

3.4.1 extension of the term of the Contract within the maximum aggregate term; or


3.4.2 modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other material aspect of the Contract.

In every case other than those listed in 3.4.1 and 3.4.2 above, both parties’ signatures (or “approval” in the State’s eProcurement System in the case of an Amendment) are required to give it effect.

3.5 Click-through Terms and Conditions. If either party uses a web-based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an “Electronic Ordering System”), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of State do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized State user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering System, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized State user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.

3.6 Books and Records

3.6.1 Retain Records. In addition to the audit rights detailed in the Uniform Terms and Conditions, State also requires that, pursuant to A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to any cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.

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3.6.2 Usage Information. Additionally, any and all information (including, but not limited to, documentation or Data) related to Eligible Agency and Co-Op Buyer usage retained solely within the Contractor’s system (for example, related to punch-out or Contractor catalog sales) shall be considered public information or information that can be shared with and distributed by the State freely and for any purpose under the State’s government purpose rights detailed in Section 3 of the Uniform Terms and Conditions [Ownership of Intellectual Property]. Any modifications to this Contract notwithstanding, the State shall have free use of any and all information related to Eligible Agency or Co-Op Buyer purchasing. Upon request by the State, Contractor shall promptly provide the State with any usage information requested and shall not attempt to limit the State's use in any way.


3.6.3 Right To Audit. The retained books and records are subject to audit by State during that period. Pursuant to A.R.S. § 41-2548(B), Contractor shall retain and shall contractually require each Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by State during that period.

3.6.4 Auditing. Contractor or Subcontractor shall either make all such books and records under subparagraphs 3.6.1 and 3.6.2 available to State at all reasonable times or produce the records at a designated State office on State’s demand, the choice of which being at State’s discretion. For the purpose of this paragraph, “reasonable times” are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities.

3.7 Subcontract

3.7.1 Initial list. N/A

3.7.2 Additional names. Contractor shall not enter into a Subcontract to perform Work under the Contract, without first obtaining Procurement Officer’s written consent with any prospective Subcontractor that (a) was not listed on the Attachment Proposed Subcontractors at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Contractor shall submit a written request sufficiently in advance of the need date for those materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may

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withhold consent pending it. Approval of additional subcontractors shall be added to the Contract by a bilateral Contract Amendment.

3.7.3 Flow-down. Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontract by inclusion or by reference, as appropriate. When making any post-execution consent requests, Contractor shall include its warrant that it will do the same for the pending Subcontracts covered by the request. Entering into Subcontracts will not relieve Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the work of Subcontractors. Nothing contained in any Subcontract will create or is to be construed as creating any contractual relationship between State and the Subcontractor.


### 3.8 Orders

3.8.1 Order Sufficiency. The Contract was awarded in accordance with the Arizona Procurement Code; the transactions and procedures required by the Arizona Procurement Code for competitive source selection have been met. An Order issued that cites the correct State contract number will suffice to authorize the Contractor to provide the Materials and perform the Services covered by that Order.

3.8.2 Order Terms. All Orders are subject to the Contract Terms and Conditions; an Order cannot modify the Contract Terms and Conditions. Any Contractor terms added to quotes or otherwise unilaterally added to Eligible Agency or Co-Op Buyer Orders are null and void.


3.8.3 Orders are Obligatory. Until the expiration or earlier termination of the Contract, State may issue and Contractor shall accept Orders that make proper reference to the Contract and are permissible hereunder, provided that, Contractor is not obliged to accept any Order that is not consistent with the then-current pricing, lead times, specifications, or payment provisions of the Contract. Contractor shall fulfill and complete any Orders that are begun but not yet completed as of expiration or earlier termination of the Contract unless State instructs otherwise at the time.

3.8.4 No Minimums or Commitments. (a) Contractor shall not impose any minimum dollar amount, item count, services volume, or services duration on Orders; (b) State makes no commitment of any kind concerning the quantity or monetary value of activity actually initiated or completed during the term of the Contract; (c)

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Contractor shall only deliver or perform as authorized by Orders; and (d) State is not limited as to the number of Orders it may issue for the Contract. For clarity of intent, the foregoing applies equally whether an Eligible Agency issues the Order or, if applicable, a Co-Op Buyer issues it.

- 3.8.5 Non-contracted Materials or Services. Any attempt to knowingly represent for sales, marketing, or related purposes that Materials or Services not specifically awarded are under a State contract is a violation of the Contract and law.
- 3.9 Order Cancellations. State may cancel Orders within a reasonable period after issuance and at its discretion. The same method used for ordering will be used for cancellation.
- 3.9.1 If State cancels an Order, then State shall:
- 3.9.1.1 pay Contractor for any portion of the Materials and Services from that Order that have been properly delivered or performed as of the cancellation effective date; and
  - 3.9.1.2 reimburse Contractor for actual, documented costs incurred in fulfilling the Order up to the cancellation effective date and the cost of any obligations incurred in fulfilling the Order up to the cancellation effective date that demonstrably cannot be canceled or that have pre-established cancellation penalties specified in the relevant Subcontracts, to the extent the penalties are reasonable and customary for the work in question.
- 3.9.2 Contractor shall not charge or be entitled to charge State for any new costs it incurs after receiving the cancellation notice; State is not liable for any Materials that were produced, shipped, or delivered, or Services that were performed before Contractor had acknowledged the corresponding Order.
- 3.9.3 State shall also be able to cancel Orders freely and without any further obligation at any time prior to Contractor's formal acknowledgement of the Order.
- 3.10 **The Contract is a mandatory statewide contract (per A.A.C. R2-7-607) for multiple purchases, projects, or assignments, and a cooperative contract (per A.R.S. § 41-2632 and A.A.C. R2-7-1002(B)) that can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a cooperative contract hereunder.**

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3.10.1 Contractor shall verify if an ordering entity is a current Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>

3.10.2 Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).


3.10.3 Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S. § 41-2633. The fee rate prior to January 1, 2024, is one (1%) percent. Rates are set in accordance with SPO Technical Bulletin (TB) 007, available on the SPO website, which may be revised at the State’s sole discretion as part of Arizona state procurement policy. For convenience (though note that this link may change over time) TB 007 may be found here:

<https://spo.az.gov/suppliers/usage-reporting>.

Failure to remit the administrative fees is a material breach of contract, and will entitle the State to its remedies under Contract Terms and Conditions Section 8 and its right to terminate for default under Section 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>

3.10.4 Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle the State to its remedies under Contract Terms and Conditions Section 8 and its right to terminate for default under Section 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

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<https://spo.az.gov/suppliers/usage-reporting>.

- 3.10.5 Contractor shall acknowledge each Order from Eligible Agencies within one (1) business day after receipt by either: (a) “approving” the Order electronically in the State’s eProcurement System, which will indicate Contractor’s unqualified acceptance of the Order as-issued; or (b) “rejecting” the Order electronically in the State’s eProcurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. By way of reminder, the only grounds on which the Contractor may reject or refuse an Order are those set out in subparagraph 3.8.3 [*Orders are Obligatory*]. Unless and until Contractor has approved the Order in the State’s eProcurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its verbal acceptance by accepting the Purchase Order electronically in the State’s eProcurement System within three (3) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in the State’s eProcurement System and if it does so the rejection will be void.
- 3.10.6 Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each Co-Op Buyer’s instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State’s part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor’s obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor’s refusal to do so would be a material breach of the Contract.
- 3.11 **Multiple-Use Provisions.** Eligible Agencies may issue Orders for Services in several forms, all of which become final and effective by a Purchase Order in the State’s eProcurement System. Orders issued by Co-Op Buyers will be in whatever form the Co-Op Buyer normally uses. Regardless of origin, Orders must cite the State contract number to be valid. State may, at its discretion in each instance, determine the scope, schedule, and price for each Order in any of the following ways:



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- 3.11.1 By choosing some or all of the Materials or Services items covered by the Contract for which a price is established in the Contract, then preparing an Order using those prices (e.g. filling out an order form), and sending it to the Contractor;
- 3.11.2 By instructing Contractor to provide a comprehensive proposal of item quantities, combinations, etc., or services hours, personnel, etc., for a defined scope using those established prices as a basis, then validating and negotiating the proposal with Contractor and issuing an Order if and when reaching agreement;
- 3.11.3 As described in 3.11.2 above but requesting the proposal from both Contractor and other vendors who are contracted within the applicable scope categories and locations, either sequentially or concurrently, then selecting the proposal or proposals combination that is most advantageous to State; or
- 3.11.4 As described in 3.11.3 above but introducing ad-hoc commercial competition by making the selection and ordering conditional on obtaining more favorable prices than the contractually-established ones.

### 3.12 Work on State Premises

- 3.12.1 Compliance With Rules. Contractor is responsible for ensuring that its personnel comply with State's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. For clarity of intent, the foregoing means that if Contractor is required to comply with certain security requirements in order to deliver, install, or perform at that particular location, then it shall do so nonetheless and without entitlement to any additional compensation or additional time for performance if those particular requirements are not expressly stated in the Contract. Contractor is reminded that violation of the prohibition under A.R.S. § 13-1502 against possession of weapons on State's property by anyone for whom Contractor is responsible is a material breach of contract and grounds for termination for default.
- 3.12.2 Protection of Grounds and Facilities. Contractor shall deliver or install the Materials and perform the Services without damaging any State grounds or facilities. Contractor shall repair or replace any damage it does cause promptly and at its own expense, subject to whatever instructions and restrictions the State needs to make to prevent inconvenience or disruption of operations. If Contractor fails to make the necessary repairs or replacements in a timely manner, State will be

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entitled to exercise its remedies under paragraph 8.5 of the Uniform Terms and Conditions [Right of Offset].

### 3.13 Transitions

3.13.1 During commencement, Contractor shall attend transition meetings with any outgoing suppliers to coordinate and ease the transition so that the impact on State’s operations is kept to a minimum. State may elect to have outgoing suppliers complete some or all of their Work or Orders in progress, even if that Work could be covered under the incoming supplier’s Contract. Conversely, the State may have a continued need for the same Materials and Services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any incoming supplier and State to ensure as smooth and complete a transition transfer as is practicable.

3.13.2 Eligible Agency or Co-Op Buyer’s representative will coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming supplier. As with the incoming transition, State may permit Contractor, when Contractor is outgoing, to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

## 4.0 Costs and Payments

4.1 Type of Pricing. Pricing shall be the latest adopted pricing by the lead state, as updated on the NASPO website.

4.2 Contractor’s Best Pricing. Contractor warrants that, for the term of the Contract, the prices and discounts set out in the Contract, shall be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent services, items of equipment, and materials under the Contract, to other similarly situated NASPO participating entities for the same goods in like quantity.

4.2.1 That price-plus-discount equivalence (“Contractor’s Best Pricing”) is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates, or allowances.

4.2.2 If Contractor’s Best Pricing for equivalent services, items of equipment, and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor’s Best Pricing for all sales related to the



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Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

- 4.2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If the difference occurred before it was identified, then Supplier agrees to charge less than the Contract Pricing until the extended difference that would have been realized (i.e. if the Contractor's Best Pricing had been applied when it should have been) has been settled.
- 4.3 Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as agreed to in the Master Agreement and modified by this Participating Addendum.
- 4.3.1 Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.
- 4.3.2 Additional Charges. Any charges or fees not delineated in the Contract shall not be added, billed, or invoiced under the Contract.
- 4.4 Price Increase. Discounts offered and any increases to the same are governed by those terms set forth in the Master Agreement, Section 6.1 Pricing.
- 4.5 Price Reductions. Price reductions shall be immediately passed along to State and may be submitted in writing to State for consideration at any time during the Contract period. The contractor shall offer State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. The State at its own discretion may accept a price reduction. The price reduction request shall be in writing and include documentation showing the actual reduction of cost. Sales promotions requests shall include differences in pricing, begin, and end date of promotion along with the products covered.
- 4.6 Travel. Contractor shall request and receive written approval prior to any travel under the Contract in which reimbursement of expenses will be requested. Contractor will be reimbursed for actual expenses incurred in accordance with the current rates specified in the State's Travel Policy. Contractor shall itemize all per diem and lodging charges. State Travel Policy, including State rates, may be located at <https://gao.az.gov/travel>. Eligible Agency or State shall reject any claim for travel reimbursement for which Contractor did not



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receive prior written approval.

### 4.7 Funding

No particular funding considerations apart from Uniform Terms and Conditions Sections 4.5 [Availability of Funds for the Next State Fiscal Year] and 4.6 [Availability of Funds for the Current State Fiscal Year] have been identified as of the Contract execution.

### 4.8 Invoicing


4.8.1 Invoices Go To Ordering Entity. Contractor shall submit all billing notices or invoices to the ordering Eligible Agency or Co-Op Buyer at the address indicated on the applicable Order document or by utilizing the Ordering Entity's purchasing tool/process.

4.8.2 Minimum Invoice Requirements. Every invoice shall include the following information:

- 4.8.2.1 Bill-to name and address;
- 4.8.2.2 Contractor name and contact information;
- 4.8.2.3 Remit-to address;
- 4.8.2.4 Invoice number and date;
- 4.8.2.5 State contract number;
- 4.8.2.6 Order number (APP PO number);
- 4.8.2.7 Material or Service description (itemized);
- 4.8.2.8 Date(s) Services were performed or Materials were delivered;
- 4.8.2.9 Applicable payment terms;
- 4.8.2.10 Quantity delivered or performed;
- 4.8.2.11 Line item unit of measure;
- 4.8.2.12 Item price;
- 4.8.2.13 Extended pricing;
- 4.8.2.14 Receipt for pass-through expenses (if applicable);
- 4.8.2.15 Taxes (as a separate invoice line item), including the percentage used to calculate taxes;
- 4.8.2.16 Mailing fees (if applicable); and
- 4.8.2.17 Total invoice amount due.

4.8.3 No Invoice without Authorization. Contractor shall not seek payment for any:

- 4.8.3.1 Materials or Services that have not been authorized on an acknowledged Order;
- 4.8.3.2 Expediting, overtime, premiums, or upcharges absent State's express

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prior approval; or

4.8.3.3 Materials or Services that are the subject of a Contract Amendment that has not been fully signed by the Procurement Officer.

4.8.4 Submitting Invoices. Contractor shall submit an invoice to the ordering Eligible Agency or Co-Op Buyer using the form and/or process required by the ordering Eligible Agency or Co-Op Buyer. Every invoice must be signed by Contractor's authorized representative and accompanied by all supporting information and documentation required by the Contract and applicable laws.

4.8.5 Defective Invoices. Without prejudice to its other rights under the Contract or further obligation to Contractor, the ordering Eligible Agency or Co-Op Buyer may, at its discretion, reject any materially defective invoice.

4.8.5.1 The ordering Eligible Agency or Co-Op Buyer shall notify the Contractor within five (5) business days after receipt if it determines an invoice to be materially defective.

4.8.5.2 Invoices will be deemed automatically rejected upon delivery if they: are sent to an incorrect address, do not reference the correct State contract and Purchase Order number, or are payable to any Person other than the Contractor.

4.8.5.3 The ordering Eligible Agency or Co-Op Buyer shall have no obligation to pay against a defective invoice unless and until Contractor has re-submitted it free of defects.

#### 4.9 Payments

4.9.1 Payment Deadline. State shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Pricing Section of the Special Terms and Conditions above, State shall make payment in full for Materials that have been delivered and accepted and Services that have been performed and accepted within the time specified in A.R.S. § 35-342, after both of the following occur: (a) all of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Services being invoiced have been performed and accepted; and (b) Contractor has provided a complete and accurate invoice in the form and manner called for in the Contract, provided that, State will not make or be liable for any payments to Contractor until Contractor has registered properly in the State's eProcurement System and provided a current IRS Form W-9 to State unless excused by law from providing one.



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- 4.9.2 **Payments Only To Contractor.** Unless an assignment and assumption agreement has been reached between the Contractor and State pursuant to Section 5.1 of the Special Terms and Conditions [Assignment and Delegation] or the State has been otherwise compelled by operation of law or order of a court of competent jurisdiction, State will only make payment to Contractor under the federal tax identifier the Contract was awarded to within the eProcurement System.
- 4.9.3 **Payment.** The applicable Eligible Agency or Co-Op Buyer shall pay undisputed amounts due to Contractor within the time period specified in Section 4 Costs and Payments of the Uniform Terms and Conditions.
- 4.9.4 **Joint Checks or Direct Pay.** Applicable Eligible Agency or Co-Op Buyer may, but is under no obligation to, pay by joint check or to pay directly to any Subcontractor or other creditor to whom any portion of Contractor's requested payment is owed.
- 4.9.5 **Recovery of Overpayment.** If applicable, Eligible Agency or Co-Op Buyer determines that an overpayment has been made to Contractor on any prior invoice, it shall inform Contractor of the amount and date of the overpayment and may deduct the overpaid amount from amounts then or thereafter due to Contractor.
- 4.9.6 **Purchasing Card.** Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders using a purchasing card. Any and all fees related to payment using a purchasing card (also called a p-card) are the responsibility of the Contractor. Unless otherwise stated in the Contract, there will be no additional fees or increase in prices associated with this method of payment.
- 4.9.7 **Automated clearing house.** Applicable Eligible Agency or Co-Op Buyer may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner from Eligible Agencies, the Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: <https://gao.az.gov/publications/forms>.

### 4.10 Applicable Taxes

- 4.10.1 **Contractor To Pay All Taxes.** State is subject to Arizona Transaction Privilege Tax (TPT). Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Contractor's responsibility (as seller) to remit. Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from an Eligible Agency or Co-Op Buyer will not relieve the Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless clearly stated otherwise in the Contract, all prices therein include Arizona TPT as well as every other manner of



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transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.

- 4.10.2 Tax Indemnity. Contractor shall hold State harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well as any related costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.


### 5.0 Contract Changes

#### 5.1 Assignment and Delegation

- 5.1.1 In Whole. Contractor shall not assign in whole its rights or delegate in whole its duties under the Contract without Procurement Officer's prior written consent, which consent Procurement Officer may withhold at his or her discretion. If Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or other non-merger change in control, then no such consent will be given in any event without the assignee or delegate giving State satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Contractor possessed when State first awarded it the Contract.
- 5.1.2 In Part. Subject to Special Terms and Conditions sections 3.7 [Subcontract] with respect to subcontracting, Contractor may assign particular rights or delegate particular duties under the Contract, but shall obtain Procurement Officer's written consent before doing so. Procurement Officer shall not unreasonably withhold consent so long as the proposed assignment or delegation does not attempt to modify the Contract in any way or to alter or impair State's rights or remedies under the Contract or state law.

### 6.0 Risk and Liability


- 6.1 Risk of Loss. Contractor shall bear all risk of loss to Materials while in pre-production, production, storage, transit, staging, assembly, installation, testing, and commissioning, if and as those duties are within the scope of the Work, until they have been accepted as conforming by State in the particular location and situation specified in the Order, or as specified generally elsewhere in the Contract if the Order does not provide particulars, provided that, risk of loss for nonconforming Materials will remain with Contractor notwithstanding acceptance to the extent the loss stems from the nonconformance.

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**6.2 General Contractor Indemnification and Insurance Requirements**

**6.2.1 Contractor Indemnification (Not Public Agency).** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or Subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

**6.2.2 Public Agency Language Only.** Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

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**6.2.3 Insurance Requirements: Supplement A to the Special Terms and Conditions: Contractor Insurance Requirements is incorporated herein as part of the Special Terms and Conditions.**

6.3 Patent and Copyright Indemnification. *[CONTRACTOR/VENDOR (NOT PUBLIC AGENCY)]*. With respect to Materials or Services provided or proposed by a Contractor Indemnitor for performance under the Contract, Contractor shall indemnify, defend and hold harmless State Indemnitees against any third-party claims for liability, costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:

6.3.1 State shall provide reasonable and timely notification to Contractor of any claim for which Contractor may be liable under this paragraph;

6.3.2 Contractor, with reasonable consultation from State, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise;

6.3.3 State may elect to participate in such action at its own expense; and

6.3.4 State may approve or disapprove any settlement or compromise, provided that, (i) State shall not unreasonably withhold or delay such approval or disapproval and (ii) State shall cooperate in the defense and in any related settlement negotiations.

If Contractor is a public agency, this section 6.3 does not apply

**7.0 Warranties**


7.1 Warranties and Requirements Related to Information Technology. Addendum B: Warranties and Requirements Related to Arizona Information Technology Statewide Policies, Standards, and Procedures is incorporated herein as part of the Special Terms and Conditions.

**8.0 State's Contractual Remedies [RESERVED]**

**9.0 Contract Termination [RESERVED]**

**10.0 Contract Claims [RESERVED]**

**11.0 Arbitration [RESERVED]**

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**12.0 General Provisions for Materials**

- 12.1 **Applicability.** Section 12 applies to the extent the Work is or includes Materials.
- 12.2 **Off-Contract Materials.** Contractor shall ensure that the design and/or procedures for the Materials ordering method prevents Orders for items not included in the scope of the Contract (and for which no price or compensation has been established contractually) or specifically excluded items. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded item ordering, and endeavors to prevent such orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, return any such items under subparagraph 12.17 or cancel any such Order under subparagraph 12.18, in either case being without obligation and at Contractor’s expense.
- 12.3 **Compensation for Late Deliveries.** Contractor shall have clear, published policies in place regarding late delivery, order cancellation, discounts, or rebates given to compensate for late deliveries, etc., and make them readily available to those Eligible Agencies, and Co-Op Buyers if applicable, that are likely to need them. If late deliveries have been specifically addressed in the Contract, the Contract shall take precedence over any such Contractor policies.
- 12.4 **Indicate Shipping Costs on Order.** Contractor shall identify and provide the required substantiating documentation for the amount it intends to add for shipping in the Order acknowledgment if shipping is additional to the contracted price or rate for an item; otherwise, Contractor shall indicate that shipping is included in the Order price (in other words, every Order must indicate clearly whether or not shipping is included in the Order price, and if not included, how much is to be added and why that amount is the correct or appropriate one).
- 12.5 **Current Products.** Contractor shall keep all products being offered under the Contract: (a) in current and ongoing production; (b) in its advertised product lines; (c) as models or types that are actively functioning in other paying customer environments; and (d) in conformance to the requirements of the Contract.
- 12.6 **Maintain Comprehensive Selection.** Contractor shall provide at all times the comprehensive selection of products for which a price is established in the Contract for ordering by Eligible Agencies, and Co-Op Buyers, if applicable.
- 12.7 **Additional Products.** State, at its discretion, may modify the scope of the Contract by Contract Amendment to include additional products or product categories so long as they




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- are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment has been fully executed, Contractor shall then update all applicable pricing and make the pricing available to all affected entities at no additional cost. Either party may make the request to add products to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional products, but State may elect not to add some or all of the products in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request shall include: (a) documentation demonstrating that the additional products meet or exceed the specifications for the original products while remaining in the same product groups as the original ones; and (b) documentation demonstrating that the proposed price for the additional products is both fair and reasonable and at the same level of discount relative to market price as were the original ones. Demonstration of (b) typically requires showing how prices offered to a significant number of buyers compare to the prices or discounts proposed for the additional products.
- 12.8 **Discontinued Products.** If a product or groups of products covered by the Contract are discontinued by the manufacturer, Contractor shall notify State within five (5) business days after receiving the manufacturer's notification. State, at its discretion, may allow Contractor to provide substitutes for the discontinued products or delete the products from the scope of the Contract. The resulting change to the Contract will be formalized by Contract Amendment. Contractor shall then update all applicable pricing and make the pricing available to all affected entities at no additional cost. The parties shall negotiate in good faith a fair price for any substitute product, but State may elect to delete the products from the scope of the Contract if no agreement is reached on substitute pricing in a timely manner. When notifying State of any discontinuance, Contractor shall provide:
- (a) manufacturer's announcement or documentation stating that the products have been discontinued, with identification by model/part number;
  - (b) documentation demonstrating that the substitute products meet or exceed the specifications for the discontinued products while remaining in the same product groups as were the discontinued ones; and
  - (c) documentation demonstrating that the proposed price for the substitute products is both fair and reasonable and at the same level of discount relative to market price as were the discontinued ones.
- 12.9 **Forced Substitutes.** The Contractor shall not provide forced substitutions under the Contract; Contractor shall obtain State's prior written consent before making any discretionary substitution for any product covered by the Contract.

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- 12.10 Recalls. In the event of a recall notice, technical service bulletin, or other important notification affecting a product offered under the Contract (collectively, “recalls” hereinafter), Contractor shall send timely notice to State for each applicable Order referencing the affected Order and product. Notwithstanding whatever protection Contractor might have under A.R.S. § 12-684, with respect to a manufacturer, Contractor shall handle recalls entirely and without obligation on State’s part, other than to permit removal of installed products, retrieve stored products, and take any other reasonably necessary actions, to implement the recall.
- 12.11 Delivery Time. Unless stated otherwise in the Purchase Order, Contractor shall make delivery within two (2) business days after receiving each Order.
- 12.12 Delivery Locations. Contractor shall offer deliveries to every location served under the scope of the Contract, specifically
- 12.12.1 if the Contract is for a single State agency in a single area, then Contractor shall deliver to any agency location in that area;
- 12.12.2 if the Contract is for a single State agency in all its locations, then Contractor shall deliver to any of that agency’s location in Arizona;
- 12.12.3 if the Contract is for cooperative use, but excludes certain areas, then Contractor shall deliver to any Eligible Agency or Co-Op Buyer location that is not in the excluded areas; and
- 12.12.4 if the Contract is for unrestricted mandatory statewide and cooperative use, then:
- 12.12.4.1 Contractor shall deliver to any Eligible Agency or Co-Op Buyer anywhere in Arizona;
- 12.12.4.2 if a prospective Co-Op Buyer outside Arizona wishes to order against the Contract, Contractor agrees to negotiate in good faith any fair and reasonable price or lead time adjustments necessary to serve that location if practicable to do so within the scope of its normal business; and,
- 12.12.4.3 if the Purchase Order indicates defined delivery areas and prices, those always apply unless the Order expressly states otherwise and Contractor accepts it.
- 12.13 Conditions at Delivery Location. Contractor shall verify receiving hours and conditions (e.g. height/weight restrictions, access control, etc.) with the relevant Eligible Agency or

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Co-Op Buyer for the receiving site before scheduling or making a delivery. Contractor shall make each delivery to the specific location indicated in the Order, which Contractor acknowledges might be inside an industrial building, institutional building, low-rise office building, or high-rise office building instead of a normal receiving dock. Contractor might be required to make deliveries to locations inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required for each delivery and driver individually. Contractor shall contact each such facility directly to confirm its most current security clearance procedures, allowable hours for deliveries, visitor dress code, and other applicable rules. State shall not pay extra charges for wait time, comebacks, or the like, nor excuse late deliveries if Contractor has failed to comply with this section.

- 12.14 **Materials Acceptance.** State has the right to accept Materials subject to a complete inspection on delivery and installation, if installation is Contractor’s responsibility. State may require acceptance criteria, including, but not limited to, conformity to the Contract, workmanship, and quality under the Contract or for a specific Order. Contractor shall remove any rejected Materials from the delivery location, or from any area to which it might have been reasonably necessary to move it, and subsequently deliver an equal quantity of conforming items within a timeframe set by the Eligible Agency or Co-Op Buyer. State shall not owe Contractor any payment for rejected Materials, and State may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Contractor in those instances where State has agreed to permit repair instead of demanding replacement.
- 12.15 **Correcting Defects.** Contractor shall, at no additional cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials.
- 12.16 Contractor shall be solely responsible for the cost of any associated cutting and patching, temporary protection measures, packing and crating, hoisting and loading, transportation, unpacking, inspection, repacking, reshipping, and reinstallation if installation is within the scope of the Contract.
- 12.17 If Contractor fails to do so in a timely manner, State will be entitled to exercise its remedies under the Contract, including but not limited to, paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions.
- 12.18 Whether State will permit Contractor to repair in place or demands that Contractor remove and replace is at State’s discretion in each instance, provided that, State shall not




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- apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on State's part.
- 12.19 Returns. State may, at its discretion, return for full credit and with no restocking charges, any delivered Materials unused in the original packaging within thirty (30) days after receipt, regardless of acceptance. If State elects to return delivered Materials, then State shall pay delivery costs to return the products to the place from which Contractor shipped them. However, if State returns delivered Materials because they are defective or non-conforming or for any other reason having to do with Contractor fault or error, then State will not be responsible for any costs associated with returning the Materials and may, at its discretion, either have those billed directly to Contractor, offset them under paragraph 8.5 [*Right of Offset*] of the Uniform Terms and Conditions, or take any other appropriate actions under the Contract.
- 12.20 Product Safety. Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the Scope of Work, State is not responsible for making any Materials safe or compliant following acceptance. Contractor shall only deliver Materials that are already safe and compliant with the warranties in the Contract Terms and Conditions.
- 12.21 Hazardous Materials. Contractor shall timely provide State with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the United States Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for State to comply with regulations when it or its other contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but State (and this Contract) use only the more up-to-date "SDS" reference. Contractor shall ensure that all its relevant personnel understand the nature of and hazards associated with (to the extent they are Contractor's responsibility under the Contract) the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous material, with "hazardous material" being any material or substance that is: (1) identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or (2) subject to statutory or regulatory requirement governing special handling, disposal or cleanup.

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**13.0 General Provisions for Services**

- 13.1 **Applicability.** Article 13 applies to the extent the Work is or includes Services.
- 13.2 **Comprehensive Services.** Contractor shall provide the comprehensive range of Services for which a price is established in the Contract for ordering by Eligible Agencies and Co-Op Buyers.
- 13.3 **Additional Services.** State at its discretion may modify the scope of the Contract by Contract Amendment to include additional Services or service categories that are within the general scope of the ones originally covered by the Contract. Once the Contract Amendment is fully executed, Contractor shall then update all applicable pricing and make them available to all affected entities at no additional cost. Either party may make the request to add Services to the Contract; regardless of who makes the request, the parties shall negotiate in good faith a fair price for any additional Services, but State may elect not to add some or all of the Services in question if no agreement is reached on pricing in a timely manner. Contractor's request or proposal in response to State's request shall include documentation demonstrating that the proposed price for the additional Services is both fair and reasonable and comparable to the original prices.
- 13.4 **Off-Contract Services.** Contractor shall ensure that the ordering process for the Services prevents Orders for Services not included in the scope of the Contract (and for which no price or compensation has been established in the Contract) or Services explicitly excluded from the Contract. Notwithstanding that State might have its own internal administrative rules regarding off-contract or excluded ordering of Services, and endeavors to prevent such Orders from occurring, Contractor is responsible for not accepting any such Orders. State may, at its discretion, cancel any such Order without obligation.
- 13.5 **Removal of Personnel.** Notwithstanding that Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, State may at its discretion, and without the obligation to demonstrate cause, instruct Contractor to remove any of its personnel from State's facilities or from further assignment under the Contract. In such cases, Contractor shall promptly replace removed personnel with other personnel that have equivalent qualifications, experience, and capabilities.
- 13.6 **Accuracy of Work.** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State shall not relieve

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Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.

**13.7 Requirements at Location of Services**

13.7.1 Contractor personnel shall perform their assigned portions of the Services at the specific location indicated in the Order. Contractor acknowledges that the location might be inside an industrial building, institutional building, or one of various office types and classes.

13.7.2 If performing the Services requires Contractor personnel to work inside a secured perimeter at certain institutional facilities (including but not limited to prisons) where prior clearances are required, Contractor shall contact the facility directly in advance of performing the Services to confirm its current security clearance procedures, allowable hours for work, visitor dress code, and other applicable rules. State shall not pay any additional fees (including but not limited to service charges) or excuse late performance, if Contractor has failed to comply with these requirements.

13.8 Acceptance of Services. State has the right to accept Services subject to acceptance criteria. State may apply acceptance criteria to the Contract or a specific Order, which may include, but are not limited to, accuracy, completeness, conformance to requirements, or quality. State shall not pay Contractor for unaccepted Services, and State may, at its discretion, withhold or make partial payment for any rejected Services, while Contractor is in the process of re-performing or otherwise curing the grounds for State’s rejection.

13.9 Corrective Action Required. Notwithstanding any other guarantees, general warranties, or particular warranties Contractor has given under the Contract, and in addition to any other rights and remedies available under the Contract, if Contractor fails to perform any material portion of the Services including, but not limited to, failure to complete any contractual deliverable or failure to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable.

13.9.1 Contractor shall provide State a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence).



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13.9.2 State may demand to review and approve Contractor's analysis and plans, and Contractor shall make any and all reasonable corrections State instructs and adopt State's recommendations, including any measures State determines to be necessary for employee or public safety, or the protection of property or the environment.

13.9.3 Contractor shall take the necessary action(s) to avoid any like failures in the future.

### 14.0 Data and Information Handling

14.1 Applicability. Article 14 applies to the extent the Work includes handling of any (1) State's proprietary and sensitive data or (2) confidential or access-restricted information obtained from State or from others at State's behest.

14.2 Data Protection and Confidentiality of Information. Contractor warrants that it will establish and maintain procedures and controls acceptable to State for ensuring that State's proprietary and sensitive data is protected from unauthorized access and information obtained from State or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by State, or prepared by others for State are proprietary to State, and all information by those same avenues is State's confidential information. To comply with the foregoing warrant:

14.2.1 Contractor shall: (a) notify State immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with State to identify the source or cause and respond to each unauthorized access or inappropriate disclosure; and (c) notify State promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and

14.2.2 Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless State has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to State's designated representative.

14.3 Personally Identifiable Information. Without limiting the generality of paragraph 14.2, Contractor warrants that it will protect any personally identifiable information ("PII") belonging to State's employees or other contractors or members of the general public that it receives from State or otherwise acquires in its performance under the Contract. For purposes of this paragraph:



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14.3.1 PII has the meaning given in the [federal] Office of Management and Budget (OMB) *Memorandum M-17-12 Preparing for and Responding to a Breach of Personally Identifiable Information, January 3, 2017*; and

14.3.2 “protect” means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) *Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information*.

NOTE (1): For convenience of reference only, the OMB memorandum is available at: <https://dpcl.d.defense.gov/Privacy/Authorities-and-Guidance/>

NOTE (2): For convenience of reference only, the GSA directive is available at: <https://www.gsa.gov/directives-library/gsa-rules-of-behavior-for-handling-personally-identifiable-information-pii-2>


14.4 Protected Health Information. Contractor warrants that, to the extent performance under Contract involves individually identifiable health information (referred to hereinafter as protected health information (“PHI”) and electronic PHI (“ePHI”) as defined in the Privacy Rule referred to below), it:

14.4.1 is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection:  
(a) the “Privacy Rule” in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; (b) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR45-160(B) or the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended; and (c) State’s current and published PHI/ePHI privacy and security policies and procedures;

14.4.2 will cooperate with State in the course of performing under the Contract so that both State and Contractor stay in compliance with the requirements in (1) above; and

14.4.3 will sign any documents that are reasonably necessary to keep both State and Contractor in compliance with the requirements in (1) above, in particular “Business Associate Agreements” in accordance with the Privacy Rule.

NOTE: For convenience of reference only, the Privacy Rule is available at: <http://www.hhs.gov/hipaa/for-professionals/privacy/index.html>

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**Supplement A - Contractor Insurance Requirements**

**Identification Clause**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as 'Indemnitee') from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as 'Claims') for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

**Insurance Requirements**


Contractors and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

**Minimum Scope and Limits of Insurance**

Contractor shall provide coverage with limits of liability not less than those stated below.

Commercial General Liability (CGL) – Occurrence Form

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Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate \$2,000,000

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

Personal and Advertising Injury \$1,000,000

Damage to Rented Premises \$50,000

Each Occurrence \$1,000,000

The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**Business Automobile Liability**


Bodily Injury and Property Damage for any owned, hired, and/or non- owned automobiles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

**Workers' Compensation and Employers' Liability**

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Workers' Compensation      Statutory

Employers' Liability

Each Accident              \$1,000,000

Disease – Each Employee    \$1,000,000

Disease – Policy Limit        \$1,000,000

Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

**Additional Insurance Requirements**


The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

**Notice of Cancellation**

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired,

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or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative’s Name, Address & Fax Number).

**Acceptability of Insurers**

Contractor’s insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an “A.M. Best” rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**Verification of Coverage**

Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.


All such certificates of insurance and policy endorsements must be received by the State before work commences. The State’s receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**Subcontractors**

Contractor’s certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All

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coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

**Approval and Modifications**

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.


**Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.


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**Supplement B - Warranties and Requirements Related to Arizona Information Technology Statewide Policies, Standards, and Procedures**

1. Security Standards
  - 1.1. Security of the State’s systems and data are of **utmost** importance to the State. In order to assure security from a personnel and operations perspective, Contractor shall comply with all requirements, in their entirety, as described in the statewide enterprise architecture; statewide Information Technology security policies, standards, and procedures; and any applicable agency-specific Information Technology security policies, standards, and procedures.
  - 1.2. Contractor shall follow the correct, current version of these policies, standards, and procedures. The current website for some of these policies, standards, and procedures is: [Information Technology Policies, Standards and Procedures](#). Note that all links in this Supplement are provided for convenience only.
  - 1.3. For security reasons, some state facilities require non-state personnel to have escorts. If required by the state facility, Contractor personnel shall only be allowed inside of a State facility if accompanied by an escort designated by the State. This is applicable in Correctional facilities, Public Safety facilities, State Lottery, and other facilities as designated by the State.
  
2. Security Framework
  - 2.1. The State of Arizona information security policies and standards follow the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF) and NIST SP 800-53 Rev. 5 Security and Privacy Guidelines may currently be located at: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>.
  - 2.2. The State has established a process to assess risk associated with storing, processing and/or transmitting State of Arizona data with external, non-State of Arizona, entities. The Arizona Risk and Authorization Management Program (AZRamp) was developed to ensure State and contractors meet these requirements. All Contractors must successfully complete the AZRamp risk assessment based upon the data classification involved as determined by the data owner and Arizona Strategic Enterprise Technology (ASET) Department. Failure to successfully complete AZRamp assessment will be deemed as breach of contract.
  - 2.3. In the State’s sole discretion, the State may also accept current FedRamp and StateRamp certifications as evidence that the Contractor has met the State’s risk assessment requirements.
  - 2.4. Other forms of CyberSecurity Frameworks (CSF), Trust Documents, Self Attestations, including, but not limited to, ISO/IEC, SOC 2 & 3, PCI, or HIPAA reports of compliance, may be reviewed as part of the State’s risk assessment, but are not exclusive or conclusive evidence that the Contractor has met the State’s risk assessment requirements.

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3. Additional Security Requirements
  - 3.1. Contractor shall comply with all security requirements requested by the State.
  - 3.2. If an Arizona Risk and Authorization Management Program (AZRamp) is required, it will generally follow these steps, each of which shall be completed by the Contractor upon request by the State:
    - 3.2.1. Contractor shall submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet with its Offer. The Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://azdohs.gov/file/4357>, and mitigate gaps or install compensating controls for any issues of concern identified by State.
    - 3.2.2. Contractor shall provide Information Security documentation for the AZRamp assessment to include System Security Plan (SSP), Written Information Security Programs (WISP), or supporting written IT policies for review of the assessment.
    - 3.2.3. Note regarding the confidential treatment of Contractor information:
      - 3.2.3.1. The State of Arizona seeks a partnership with our supporting vendors, therefore, Non-Disclosure Agreements (NDA) for release to review submitted SSP's, WISP 's, or written IT policies will not be considered.
      - 3.2.3.2. Submitted SSP's, WISP's, or written IT policies are deleted and not retained after AZRamp Authorization is granted.
      - 3.2.3.3. Procedures for submission of documents considered confidential or proprietary are identified within this RFP.
      - 3.2.3.4. Special secure transfer of documents related to this AZRamp review process may be made by contacting: [AsetAssurance@azdoa.gov](mailto:AsetAssurance@azdoa.gov) to make special arrangements for the transfer of these documents.
    - 3.2.4. If applicable, Contractor shall complete and submit an unedited and signed State of Arizona Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (BAA).
    - 3.2.5. All contracts are contingent on the successful completion of the AZRamp 125 Low Impact (public information) or the AZRamp 325 Moderate (Confidential, PII, or PHI) Impact Control spreadsheet titled "Arizona Infrastructure Security Controls 2017 (Excel)," to be determined by the Enterprise Security, Privacy & Risk Compliance team. Low (Column E) and Moderate (Column F) Impact controls spreadsheet can be located here: <https://azdohs.gov/file/4356>.
  - 3.3. The State reserves the right to conduct risk assessments, vulnerability assessments, black-box penetration tests or hire a third party to conduct risk assessments, vulnerability assessments, and black-box penetration tests of the Contractor's environment. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall

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respond to all flaws deemed serious by the State when discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control(s).

- 3.4. Upon request, Contractor shall submit copies of system logs from Contractor's environment to the State of AZ security team in the format requested to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).
- 3.5. Contractor shall comply with all applicable State and Federal laws and regulations, including, but not limited to, the following (please note that the links are provided for convenience only and may change):
  - 3.5.1. State of Arizona statewide policies, standards and procedures: <https://azdohs.gov/information-technology-it-policies-standards-and-procedures>;
  - 3.5.2. Federal Information Security Modernization Act of 2014 (FISMA): <https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma>;
  - 3.5.3. OMB Circular A-130: <https://www.federalregister.gov/documents/2016/07/28/2016-17872/revision-of-omb-circular-no-a-130-managing-information-as-a-strategic-resource>;
  - 3.5.4. National Cyber Strategy of the United States of America: <https://www.cisa.gov/executive-order-strengthening-cybersecurity-federal-networks-and-critical-infrastructure>;
  - 3.5.5. Health Insurance Portability and Accountability Act (HIPAA) including Business Associate Agreement/ Health Information Technology for Economic and Clinical Health Act (HITECH): <https://www.hhs.gov/hipaa/index.html>;
  - 3.5.6. Tax Information Security Guidelines For Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information (IRS Publication 1075): <https://www.irs.gov/pub/irs-pdf/p1075.pdf>;
  - 3.5.7. Criminal Justice Information Services Security Policy (CJIS): <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>;
  - 3.5.8. Centers for Medicare & Medicaid Services (CMS), Minimum Acceptable Risk Standards for Exchanges (MARS-E): <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0-Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf>;
  - 3.5.9. A.R.S. Title 41, Chapter 41. Arizona Department of Homeland Security;
  - 3.5.10. A.R.S. §18-104 - Arizona Department of Administration, Arizona Strategic Enterprise Technology (ADOA-ASET), Powers and duties of the agency: <https://www.azleg.gov/arsDetail/?title=18>;
  - 3.5.11. A.R.S. §18-105 - Statewide Information Security and Privacy Office (SISPO): <https://www.azleg.gov/viewdocument/?docName=http%3A/www.azleg.gov/ars/18/00105.htm>;




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- 3.5.12. A.R.S. §18-551 - Definitions Information Security Including PII:  
<https://www.azleg.gov/ars/18/00551.htm>;
- 3.5.13. A.R.S. §18-552 - Notification of security system breaches; requirements; enforcement;  
civil penalty; preemption; exceptions:  
<https://www.azleg.gov/ars/18/00552.htm>;
- 3.5.14. Arizona Executive Order 2008-10 – Mitigating Cyber Security Threats:  
<https://aset.az.gov/node/192>;
- 3.5.15. SIPC Memorandum of Understanding (MOU): <https://www.sipc.org/about-sipc/>;
- 3.5.16. State Environmental policies: <https://azdeq.gov/LawsAndRules>;
- 3.5.17. Family Education Rights Privacy Act (FERPA):  
<https://www2.ed.gov/policy/gen/aid/fpco/ferpa/index.html?src=em>;
- 3.5.18. Driver's Privacy Protection Act (DPPA):  
<https://azdot.gov/motor-vehicles/driver-services/driver-license-information/motor-vehicle-records>;
- 3.5.19. Incident Response Reporting program and system:  
[https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning\\_Sept2018\\_0.pdf](https://aset.az.gov/sites/default/files/P8240%20Incident%20Response%20Planning_Sept2018_0.pdf);
- 3.5.20. Privacy Incident Reporting policy and standards:  
<https://aset.az.gov/sites/default/files/STANDARD%208240%20INCIDENT%20RESPONSE%20PLANNING.pdf>;
- 3.5.21. State of Arizona Library, Archives and Public Records, Records Management Division, General Retention Schedules <https://azlibrary.gov/arm/policies>; and
- 3.5.22. Payment Card Industry (PCI) Security Standards including but not limited to Supplemental Documents, Information Supplements and Validation Requirements:  
<https://www.pcisecuritystandards.org>.

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**Attachment A, Part 2: Uniform Terms and Conditions 10.4**


1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
  - 1.1. "Attachment" means any item the Solicitation which requires the Offeror to submit as part of the Offer.
  - 1.2. "Contract" means the combination of the Solicitation, including the Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
  - 1.3. "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
  - 1.4. "Contractor" means any person who has a Contract with the State.
  - 1.5. "Data" means recorded information, regardless of form or the media on which it may be recorded. The term may include technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
  - 1.6. "Days" means calendar days unless otherwise specified.
  - 1.7. "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation generally containing maps, schematics, examples of reports, or other documents that will be used to perform the requirements of the Scope of Work after contract award.
  - 1.8. "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  - 1.9. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
  - 1.10. "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
  - 1.11. "Services" means the furnishing of labor, time or effort by a Contractor or Subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

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- 1.12. "State" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona that executes the Contract.
- 1.13. "State Fiscal Year" means the period beginning with July 1 and ending June 30.
- 1.14. "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a Subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Materials or any Services required for the performance of the Contract.
- 1.15. "Subcontractor" means a person who contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the State.

2. Contract Interpretation


- 2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
  - 2.3.1. Special Terms and Conditions;
  - 2.3.2. Uniform Terms and Conditions;
  - 2.3.3. Statement or Scope of Work;
  - 2.3.4. Specifications;
  - 2.3.5. Attachments;
  - 2.3.6. Exhibits; then
  - 2.3.7. Any other documents referenced or included in the Solicitation including, but not limited to, any Bid or Offer documents provided by the Contractor that do not fall into one of the above categories.

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- 2.4. **Relationship of Parties.** The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5. **Severability.** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6. **No Parol Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. **Contract Administration and Operation**

- 3.1. **Records.** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain any and all Data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2. **Non-Discrimination.** The Contractor shall comply with State Executive Order Nos. 2023-09, 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3. **Audit.** Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4. **Facilities Inspection and Materials Testing.** The Contractor agrees to permit access to its facilities, Subcontractor facilities, and the Contractor's processes or services, at reasonable times for inspection of the facilities or Materials covered under this Contract as required under A.R.S. § 41-2547. The State shall also have the right to test, at its own cost, the Materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor Materials testing shall constitute final acceptance of the Materials or Services. If the State determines non-compliance of the Materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

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- 3.5. **Notices.** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation, stated in the Contract, or listed on the State’s eProcurement system. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6. **Advertising, Publishing and Promotion of Contract.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7. **Continuous Improvement.** Contractor shall recommend continuous improvements on an on-going basis in relation to any Materials and Services offered under the Contract, with a view to reducing State costs and improving the quality and efficiency of the provision of Materials or Services. State may require Contractor to engage in continuous improvements throughout the term of the Contract.
- 3.8. **Other Contractors.** State may undertake on its own or award other contracts to the same or other suppliers for additional or related work. In such cases, the Contractor shall cooperate fully with State employees and such other suppliers and carefully coordinate, fit, connect, accommodate, adjust, or sequence its work to the related work by others. Where the Contract requires handing-off Contractor’s work to others, Contractor shall cooperate as State instructs regarding the necessary transfer of its work product, Materials, Services, or records to State or the other suppliers. Contractor shall not commit or permit any act that interferes with the State’s or other suppliers’ performance of their work, provided that, State shall enforce the foregoing section equitably among all its suppliers so as not impose an unreasonable burden on any one of them.
- 3.9. **Ownership of Intellectual Property**
- 3.9.1. **Rights In Work Product.** All intellectual property originated or prepared by Contractor pursuant to the Contract, including but not limited to, inventions, discoveries, intellectual copyrights, trademarks, trade names, trade secrets, technical communications, records reports, computer programs and other documentation or improvements thereto, including Contractor’s administrative communications and records relating to the Contract, are considered work product and Contractor’s property, provided that, State has Government Purpose Rights to that work product as and when it was delivered to State.
- 3.9.2. “Government Purpose Rights” are:
- 3.9.2.1. the unlimited, perpetual, irrevocable, royalty free, non-exclusive, worldwide right to use, modify, reproduce, release, perform, display, sublicense, disclose and



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create derivatives from that work product without restriction for any activity in which State is a party;

3.9.2.2. the right to release or disclose that work product to third parties for any State government purpose; and

3.9.2.3. the right to authorize those to whom it rightfully releases or discloses that work product to use, modify, release, create derivative works from the work product for any State government purpose; such recipients being understood to include the federal government, the governments of other states, and various local governments.

3.9.3. "Government Purpose Rights" do not include any right to use, modify, reproduce, perform, release, display, create derivative works from or disclose that work product for any commercial purpose, or to authorize others to do so.

3.9.4. Joint Developments. The Contractor and State may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.

3.9.5. Pre-existing Material. All pre-existing software and other Materials developed or otherwise obtained by or for Contractor or its affiliates independently of the Contract or applicable Purchase Orders are not part of the work product to which rights are granted State under subparagraph 3.9.1 above, and will remain the exclusive property of Contractor, provided that:


3.9.5.1. any derivative works of such pre-existing Materials or elements thereof that are created pursuant to the Contract are part of that work product;

3.9.5.2. any elements of derivative work of such pre-existing Materials that was not created pursuant to the Contract are not part of that work product; and

3.9.5.3. except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Contractor's or its affiliates' ownership of such pre-existing Materials.

3.9.6. Developments Outside Of Contract. Unless expressly stated otherwise in the Contract, this Section does not preclude Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to State hereunder.

3.10. Property of the State. If there are any materials that are not covered by Section 3.9 above created under this Contract, including but not limited to, reports and other deliverables, these materials are


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the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.


- 3.11. Federal Immigration and Nationality Act. Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, Contractor shall flow down this requirement to all Subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of Contractor and Subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the Contractor or any Subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default and suspension or debarment of the contractor.
- 3.12. E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.
- 3.13. Offshore Performance of Work involving Data is Prohibited. Any Services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to Data shall be performed within the defined territories of the United States.
- 3.14. Protection of State Cybersecurity Interests. The Contractor shall comply with State Executive Order No. 2023-10, which includes, but is not limited to, a prohibition against (a) downloading and installing of TikTok on all State-owned and State-leased information technology; and (b) accessing TikTok through State information technology.
- 3.15. Certifications Required by State Law.
  - 3.15.1. If Contractor is a Company as defined in A.R.S. § 35-393, Contractor certifies that it is not currently engaged in a boycott of Israel as described in A.R.S. §§ 35-393 *et seq.* and will refrain from any such boycott for the duration of this Contract.
  - 3.15.2. Contractor further certifies that it shall comply with A.R.S. § 35-394, regarding use of the forced labor of ethnic Uyghurs, as applicable.

#### 4. Costs and Payments

- 4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of Materials or Services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

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- 4.2. **Delivery.** Unless stated otherwise in the Contract, per A.R.S. § 47-2319, all prices shall be F.O.B. (“free on board”) Destination and shall include all freight delivery and unloading at the destination.
- 4.3. **Firm, Fixed Price.** Unless stated otherwise in the Special Terms and Conditions of the Contract, all prices shall be firm-fixed-prices.
- 4.4. **Applicable Taxes**
- 4.4.1. **Payment of Taxes.** The Contractor shall be responsible for paying all applicable taxes.
- 4.4.2. **State and Local Transaction Privilege Taxes.** The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.4.3. **Tax Indemnification.** Contractor and all Subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.
- 4.4.4. **IRS W9 Form.** In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.5. **Availability of Funds for the Next State Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current State Fiscal Year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current State Fiscal Year until funds are made available for performance of this Contract.
- 4.6. **Availability of Funds for the Current State Fiscal Year.** Should the State Legislature enter back into session and reduce the appropriations or for any reason and these Materials or Services are not funded, the State may take any of the following actions:
- 4.6.1. Accept a decrease in price offered by the Contractor;
- 4.6.2. Cancel the Contract; or
- 4.6.3. Cancel the Contract and re-solicit the requirements.


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5. **Contract Changes**

- 5.1. **Amendments.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of Services or Materials, the revision of payment terms, or the substitution of Services or Materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2. **Subcontracts.** The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer as described in Arizona State Procurement Office Standard Procedure 002. The Contractor shall clearly list any proposed Subcontractors and the Subcontractor’s proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3. **Assignment and Delegation.** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. **Risk and Liability**

- 6.1. **Risk of Loss.** The Contractor shall bear all loss of conforming Materials covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming Materials shall remain with the Contractor regardless of receipt.
- 6.2. **Indemnification**
- 6.2.1. **Contractor/Vendor Indemnification (Not Public Agency).** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or Subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of such

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Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the Contractor or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.

6.2.2. Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

6.3. Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of Materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this paragraph shall not apply.

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither the Contractor nor State shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

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6.4.2. Force Majeure shall not include the following occurrences:

- 6.4.2.1. Late delivery of equipment, Materials, or Services caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either the Contractor or State is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.


6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or Services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the Materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in the Special Terms and Conditions, the Contractor warrants that, for one (1) year after acceptance by the State of the Materials, they shall be:

- 7.2.1. Of a quality to pass without objection in the trade under the Contract description;
- 7.2.2. Fit for the intended purposes for which the Materials are used;

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- 7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- 7.2.4. Adequately contained, packaged, and marked as the Contract may require; and
- 7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.


7.3. **Conformity to Requirements.**

- 7.3.1. Contractor warrants that, unless expressly provided otherwise elsewhere in the Contract, the Materials and Services will for one (1) year after acceptance and in each instance:
  - 7.3.1.1. Conform to the requirements of the Contract, which by way of reminder include without limitation all descriptions, specifications, and drawings identified in the Scope of Work and any and all Contractor affirmations included as part of the Contract;
  - 7.3.1.2. Be free from defects of material and workmanship;
  - 7.3.1.3. Conform to or perform in a manner consistent with current industry standards; and
  - 7.3.1.4. Be fit for the intended purpose or use described in the Contract.
- 7.3.2. Mere delivery or performance does not substitute for express acceptance by the State. Where inspection, testing, or other acceptance assessment of Materials or Services cannot be done until after installation or invoicing, the forgoing warranty will not begin until State's explicit acceptance of the Materials or Services.

7.4. **Inspection/Testing.** The warranties set forth in this Section 7 [Warranties] are not affected by inspection or testing of or payment for the Materials or Services by the State.


7.5. **Contractor Personnel.** Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Contractor further warrants that its key personnel will maintain any and all certifications relevant to their work, and Contractor shall provide individual evidence of certification to State's authorized representatives upon request.

7.6. **Compliance With Applicable Laws.** The Materials and Services supplied under this Contract shall comply with all applicable federal, state, and local laws and policies (including, but not limited to, information technology policies, standards, and procedures available on the State's website and/or the website of any department, commission, council, board, bureau, committee, institution, agency,

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government corporation or other establishment or official of the executive branch or corporation commission of the State of Arizona). Federal requirements may be incorporated into this Contract, if required, pursuant to A.R.S. § 41-2637. Contractor shall maintain any and all applicable license and permit requirements. This requirement includes, but is not limited to, any and all Arizona state statutes that impact state contracts, regardless of whether those statutory references have been removed during the course of contract negotiations; this is notice to Contractors that the State does not have the authority to modify Arizona state law by contract.

- 7.7. **Intellectual Property.** Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Contractor is not and cannot reasonably be expected to be aware of the infringement or violation.
- 7.8. **Licenses and Permits.** Contractor warrants that it will maintain all licenses required to fully perform its duties under the Contract and all required permits valid and in force.
- 7.9. **Operational Continuity.** Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Contractor’s duties hereunder absent a consented delegation under paragraph 5.3 [Assignment and Delegation] that expressly recognizes the event.
- 7.10. **Performance in Public Health Emergency.** Contractor warrants that it will:
  - 7.10.1. Have in effect, promptly after commencement, a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:
    - 7.10.1.1. Identification of response personnel by name;
    - 7.10.1.2. Key succession and performance responses in the event of sudden and significant decrease in workforce; and
    - 7.10.1.3. Alternative avenues to keep sufficient product on hand or in the supply chain.
  - 7.10.2. Provide a copy of its current plan to State within three (3) business days after State’s written request. If Contractor claims relief under paragraph 6.4 [Force Majeure] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

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7.10.3. A request from the State related to this paragraph 7.10 does not necessarily indicate that there has been an occurrence of force majeure, and the Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement a plan.

7.10.4. Failure to have or implement an appropriate plan will be a material breach of contract.

7.11. Lobbying


7.11.1. Prohibition. Contractor warrants that it will not engage in lobbying activities, as defined in 40 Code of Federal Regulations (CFR) part 34 and A.R.S. § 41-1231, *et seq.*, using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and upon award of the Contract, it will disclose all lobbying activities to State to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. Contractor shall implement and maintain adequate controls to assure compliance with above. Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts.

7.11.2. Exception. This paragraph 7.11 does not apply to the extent that the Services are defined in the Contract as being lobbying for State's benefit or on State's behalf.

7.12. Covered Telecommunications or Services. Contractor warrants that the Materials and Services rendered under this Agreement will not require Contractor to use for the State, or provide to the State to use, "covered telecommunications equipment or Services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25.

7.13. Debarment, Suspension, U.S. Government Restricted Party Lists. Contractor warrants that it is not, and its Subcontractors are not, on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither the Contractor nor any Subcontractors are presently debarred, suspended, proposed for debarment or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.

7.14. False Statements. Contractor represents and warrants that all statements and information Contractor prepared and submitted in response to the Solicitation or as part of the Contract documents are current, complete, true, and accurate. If the Procurement Officer determines that Contractor submitted an Offer or Bid with a false statement, or makes material misrepresentations during the performance of the Contract, the Procurement Officer may determine that Contractor

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has materially breached the Contract and may void the submitted Offer or Bid and any resulting Contract.

7.15. Survival of Rights and Obligations after Contract Expiration or Termination.

7.15.1. Survival of Warranty. All representations and warranties made by Contractor under the Contract will survive the expiration or earlier termination of the Contract.

7.15.2. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12- 529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.15.3. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.


8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.


8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make

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an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 8.3. **Non-exclusive Remedies.** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. **Nonconforming Tender.** Materials or Services supplied under this Contract shall fully comply with the Contract. The delivery of Materials or Services or a portion of the Materials or Services that do not fully comply constitutes a breach of contract. On delivery of nonconforming Materials or Services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. **Right of Offset.** The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
9. **Contract Termination**
- 9.1. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2. **Gratuities.** The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State with the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by the Contractor.
- 9.3. **Suspension or Debarment.** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but

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not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.

9.4. **Termination for Convenience.** The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, Data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and Materials or Services accepted before the effective date of the termination. The cost principles and procedures provided in A.R.S. § 41-2543 and A.A.C. Title 2, Chapter 7, Article 7, shall apply.

9.5. **Termination for Default.**

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.


9.5.2. Upon termination under this paragraph, all goods, Materials, documents, Data, and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, Materials or Services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring Materials or Services in substitution for those due from the Contractor.

9.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.


10. **Contract Claims**

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

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11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (A.R.S. Title 41).

	<b>Attachment B: Participation in Boycott of Israel</b>	Arizona Department of Administration State Procurement Office
	Contract No.: CTR074591	
	Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies	

**Attachment B: Participation in Boycott of Israel**

Please note that if any of the following apply to this Contract, then the Contractor shall select the "Exempt Contract or Contractor" option below:

- The Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
  - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this state or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

**In compliance with A.R.S. § 35-393 et seq., all Contractors must select one of the following:**

The Contractor does not participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. § 35-393 et seq. I understand that my entire response will become a public record in accordance with A.A.C. R2-7-C317.

The Contractor does participate in a boycott of Israel as described in A.R.S. § 35-393 et seq.

**Exempt Contract, or Contractor.**

Indicate which of the following statement(s) applies to this Contract:

- Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; and/or
- Contractor is a non-profit organization.

Fastenal Company

Contractor Name

2001 Theurer Blvd.

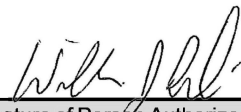
Address

Winona, MN 55987

City

State

Zip




Signature of Person Authorized to Sign

William Drazkowski

Printed Name

Executive Vice President

Title

	<b>Attachment C: Forced Labor of Ethnic Uyghurs Ban</b>	Arizona Department of Administration State Procurement Office
	Contract No.: CTR074591	
	Description: Facilities Maintenance and Repair & Operations (MRO) and Industrial Supplies	

**Attachment C: Forced Labor of Ethnic Uyghurs Ban**

Please note that if any of the following apply to the Contractor, then the Contractor shall select the "Exempt Contractor" option below:

- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. § 35-394, written certification is required to show that the company entering into a contract with a public entity does not use the forced labor, or use any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor or any goods or services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China.

Under A.R.S. § 35-394:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
2. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

**In compliance with A.R.S. § 35-394, all Contractors must select one of the following:**

- The Contractor **does not** use, and agrees not to use during the term of the contract, any of the following:
- Forced labor of ethnic Uyghurs in the People's Republic of China;
  - Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or
  - Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- The Contractor **does** use of Forced Uyghurs Labor as described in A.R.S. § 35-394.
- Exempt Contractor: Select all statements that apply to the Contractor:**
- Contractor is a sole proprietorship;
  - Contractor has fewer than ten (10) employees; and/or
  - Contractor is a non-profit organization

**Fastenal Company**

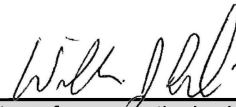
Contractor Name

2001 Theurer Blvd.

Address

Winona, MN 55987

City, State, ZIP



Signature of person authorized to sign

William Drazkowski, Executive Vice President

Printed name and title

wfranse@fastenal.com

Contact email address

757-342-6123

Contact phone number



# Commonwealth of Kentucky

## MASTER AGREEMENT

CONTRACT INFORMATION		
<b>MASTER AGREEMENT NUMBER: MA 758 2500000414</b>		
Effective Date:	09/01/2024	Record Date:
Expiration Date:	08/31/2026	Procurement Folder: 1306457
Document Description:	Facilities MRO and Industrial Supplies NASPO (Fastenal)	Procurement Type: Standard Goods and Services
Cited Authority:	Competitive Negotiation-Goods and Services	Version Number: 1

CONTACT INFORMATION
---------------------

**ISSUER:**  
 Daniel Salvato  
 502-564-5862  
 daniel.salvato@ky.gov

VENDOR INFORMATION	
<b>Name /Address:</b>	<b>Contact:</b>
KY0028496: FASTENAL COMPANY	Ken Lyons
1030S 9TH STREET	3172238007
LOUISVILLE KY 40203	klyons@fastenal.com

COMMODITY / SERVICE INFORMATION							
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Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Total
1	1.00000	EA	\$0.010000	\$0.00			\$0.01

Facilities MRO and Industrial Supplies

**Extended Description:**

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	Document Phase	Document Description	Page 2
2500000414	Draft	Facilities MRO and Industrial Supplies NASPO (Fastenal)	Total Pages: 2

See "Attachment A" for Terms and Conditions. The terms and conditions set out in "Attachment A" are incorporated into and are a part of the Contract.

**Master Agreement Number MA 758 2500000414**  
**for**  
**FACILITIES MRO AND INDUSTRIAL SUPPLIES**  
**between**  
**the State of Kentucky**  
**and**  
**Fastenal Company**

This Master Agreement is entered into by the State of Kentucky (“Lead State”) and the following contractor (each a “Party” and collectively the “Parties”) as a result of Solicitation Number RFP 758 2400000228 (the “RFP”) for the purpose of providing Facilities MRO and Industrial Supplies through the NASPO ValuePoint cooperative purchasing program:

Fastenal Company (“Contractor”)  
2001 Theurer Blvd.  
Winona, Mn. 55987

**MASTER AGREEMENT CONTACTS.**

Contractor’s contact for this Master Agreement is:

Zach Wise  
Government Sales Manager  
govsales@fastenal.com  
507-313-7206

Lead State’s contact for this Master Agreement is:

Daniel Salvato, CPPB, NIGP-CPP, KCPM  
Office of Procurement Services  
200 Mero Street, 5<sup>th</sup> Floor  
Frankfort, KY 40622  
(502) 564-5862  
[daniel.salvato@ky.gov](mailto:daniel.salvato@ky.gov)

**TERM.** This Master Agreement is effective as of the date of September 1, 2024, and will terminate on August 31, 2026 unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to four years following the initial term may be exercised upon mutual agreement by the Parties.


**ATTACHMENTS.** This Master Agreement includes the following attachments:

- Attachment A: Master Agreement Terms and Conditions
- Exhibit 1: Description of Goods and/or Services and Discount Percentages
- Exhibit 2: Environmentally Preferred Products
- Exhibit 3: NASPO ValuePoint Sales Data Report Form

**SIGNATURE.** The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

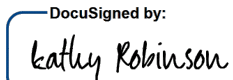
IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

**CONTRACTOR:**

  
\_\_\_\_\_  
**Signature** **8/28/2024**  
**Date**

William Drazkowski, Executive Vice President  
\_\_\_\_\_  
**Printed Name and Title**

**LEAD STATE:**

DocuSigned by:  
  
\_\_\_\_\_  
**Signature** **8/30/2024**  
**Date**

Kathy Robinson, Executive Director  
\_\_\_\_\_  
**Printed Name and Title**

## Attachment A



### MASTER AGREEMENT TERMS AND CONDITIONS

#### NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

##### I. Definitions

- 1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 **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.
- 1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) corporation. 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.

- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 Product or Products and Services** 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 Product includes goods and services.
- 1.13 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or 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.

## II. Term of Master Agreement

- 2.1 Initial Term.** The initial term of this Master Agreement is for two years. The term of this Master Agreement may be amended beyond the initial term for four additional years (two renewals for two years each) at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in

the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

### III. Order of Precedence

**3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:

- 3.1.1** A Participating Entity’s Participating Addendum (“PA”);
- 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
- 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
- 3.1.4** The Solicitation or, if separately executed after award, the Lead State’s bilateral agreement that integrates applicable provisions;
- 3.1.5** Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

**3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will 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.

**3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. The term of a Participating Addendum will not exceed the term of this Master Agreement, except when a Participating Entity determines an extension of its Participating Addendum is necessary to avoid a lapse in contract coverage and is permitted by law.

### IV. Participants and Scope

**4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

**4.2 Applicability of Master Agreement.** 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, subject to Section III. For the purposes 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.

**4.3 Obligated Entities.** 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. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

**4.4 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspo.valuepoint.org](mailto:pa@naspo.valuepoint.org) to support documentation of participation and posting in appropriate databases.

#### **4.5 Participating Entities.**

**4.5.1** If not proscribed by law or by the Chief Procurement Official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with Contractor. Such entities may include:

**4.5.1.1** Political subdivisions, public agencies, and service districts;

**4.5.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;

**4.5.1.3** Federally recognized tribes;

**4.5.1.4** Quasi-governmental entities; and

**4.5.1.5** Eligible non-profit organizations.

**4.5.2** Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists;

each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

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

**4.7 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, 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 and as the Participating Entity has in the Participating Addendum, 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.

**4.8 Release of Information.** 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.

**4.9 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity'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.

## V. NASPO ValuePoint Provisions

**5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

### 5.2 Administrative Fees

**5.2.1 NASPO ValuePoint Fee.** 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 must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.

**5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

### **5.3 NASPO ValuePoint Summary and Detailed Usage Reports**

**5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

**5.3.2 Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

**5.3.3 Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

**5.3.4 Sales Data Crosswalks.** Intentionally omitted.

**5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

**5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

**5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall 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 eligible entities can participate in the Master Agreement.

**5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will

include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement 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.

## **5.5 NASPO ValuePoint eMarketPlace**

- 5.5.1** The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.
- 5.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.
- 5.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote),

Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.

- 5.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 5.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms and pricing of this Master Agreement.
- 5.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 5.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 5.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 5.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 5.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (e.g., entity-

specific pricing, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that Participating Entity accurately reflects and is compliant with these requirements.

**5.5.11 Implementation Timeline:** Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

**5.5.11.1** Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.

**5.5.11.2** Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.

**5.5.11.3** NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.

**5.5.11.3.1 Hosted Catalog.** By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.

**5.5.11.3.2 Punchout Site.** By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.

**5.5.11.3.3eQuoting.** NASPO will work with Contractor to set up participation and use to provide eQuotes through the NASPO eMarketPlace. This requirement would be in addition to any requirement to provide a hosted catalog or punchout site.

**5.5.12** Hosted catalogs and punchout sites will provide all of the eMarketPlace standard data elements/information including, but not limited to, the following:

- 5.5.12.1** The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;
- 5.5.12.2** A Lead State contract identification number for this Master Agreement;
- 5.5.12.3** Detailed product line item descriptions;
- 5.5.12.4** Pictures illustrating products, services, or solutions where practicable; and
- 5.5.12.5** Any additional NASPO, Lead State, or Participating Addendum requirements.

**5.6 Cancellation.** In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if the 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 execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

**5.7 Canadian Participation.** Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest

Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

**5.8 Additional Agreement with NASPO.** Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

## **VI. Pricing, Payment & Leasing**

**6.1 Pricing.** The discount percentages contained in this Master Agreement or offered under this Master Agreement represent the minimum discount to any Purchasing Entity.

**6.1.1** All discount percentages must be guaranteed for the term of the Master Agreement.

**6.1.2** Pricing shall be held static, or reduced, from order through delivery. No pricing increases between order and delivery shall be accepted.

**6.1.3** Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State and Contractor.

**6.1.4** No retroactive adjustments to prices or rates will be allowed.

**6.2 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be 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 or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

**6.3 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.

## VII. Ordering

- 7.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 Applicable Rules.** 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.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** 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.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** 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.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall 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 in any manner inconsistent with this Master Agreement's terms.

**7.5.5** Orders for any separate indefinite quantity, task order, 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.

**7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:

**7.6.1** The services or supplies being delivered;

**7.6.2** A shipping address and other delivery requirements, if any;

**7.6.3** A billing address;

**7.6.4** Purchasing Entity contact information;

**7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;

**7.6.6** A not-to-exceed total for the products or services being ordered; and

**7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

**7.7 Communication.** All communications concerning administration of Orders placed must 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.

**7.8 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.

## VIII. Shipping and Delivery

**8.1 Shipping Terms.** All deliveries, except as noted below, will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

**8.1.1** Additional shipping charges for oversized or overweight items that require special shipping are allowed but must be identified as part of the ordering process.

**8.1.2** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

**8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. 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 will be shipped without charge.

**8.3 Inside Deliveries.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

**8.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

## IX. Inspection and Acceptance

**9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

**9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

**9.3 Inspection.** 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, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

**9.3.1** 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.

**9.3.2** 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.

**9.4 Failure to Conform.** 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.

**9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

**9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

**9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

**9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity

may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

**9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

**9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

## **X. Warranty**

**10.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

**10.2 Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

**10.3 Breach of Warranty.** Upon breach of the warranty set forth above, 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.

**10.4 Rights Reserved.** 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.

**10.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

## **XI. Product Title**

**11.1 Conveyance of Title.** 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.

**11.2 Embedded Software.** Transfer of title to the Product must 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 will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

**11.3 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.

## **XII. Indemnification**

**12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement.

**12.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").

**12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

**12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;

**12.2.1.2** specified by the Contractor to work with the Product;

**12.2.1.3** reasonably required 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

**12.2.1.4** reasonably expected to be used in combination with the Product.

**12.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

**12.2.3** 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 the Intellectual Property Claim 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.

**12.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **XIII. Insurance**

**13.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.

**13.2 Class.** 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.

**13.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

**13.3.1** Contractor shall maintain Commercial General Liability insurance 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 and \$2 million general aggregate;

**13.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

**13.4 Notice of Cancellation.** 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.

**13.5 Notice of Endorsement.** 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) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

**13.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.

**13.7 Furnishing of Certificates.** 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 will 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.

**13.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

#### **XIV. General Provisions**

##### **14.1 Records Administration and Audit**

**14.1.1** 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 will 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 will survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Master 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.

**14.1.2** 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.

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

##### **14.2 Confidentiality, Non-Disclosure, and Injunctive Relief**

**14.2.1 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.

**14.2.1.1** 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").

**14.2.1.2** 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.

**14.2.1.3** 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.

**14.2.2 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.

**14.2.2.1** 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.

**14.2.2.2** 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.

**14.2.2.3** 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.

**14.2.2.4** 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.

**14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary 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.

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

**14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, 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 this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

**14.2.6 Public Information.** This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

### **14.3 Assignment/Subcontracts**

**14.3.1** 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.

**14.3.2** The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties, to NASPO ValuePoint and other third parties.

**14.3.3** The contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire contract whether or not subcontractors are used. The Lead State shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor. All references to the contractor shall be construed to encompass both the contractor and any subcontractors of the contractor.

**14.4 Changes in Contractor Representation.** The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall 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.

**14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has 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 shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

**14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (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 will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

**14.7 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 acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**14.8 Defaults and Remedies**

**14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

**14.8.1.1** Nonperformance of contractual requirements;

**14.8.1.2** A material breach of any term or condition of this Master Agreement;

**14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

**14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar

officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

**14.8.1.5** Any default specified in another section of this Master Agreement.

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

**14.8.3** 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:

**14.8.3.1** Any remedy provided by law;

**14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;

**14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;

**14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;

**14.8.3.5** Suspension of Contractor's performance; and

**14.8.3.6** Withholding of payment until the default is remedied.

**14.8.4** 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 an 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 will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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

**14.10 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 public procurement or contracting 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.

**14.11 No Waiver of Sovereign Immunity**

**14.11.1** In no event will 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.

**14.11.2** 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.

#### **14.12 Governing Law and Venue**

**14.12.1** The procurement, evaluation, and award of the Master Agreement will 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 will 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 will be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's state.

**14.12.2** 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 state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will 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 will be in the Purchasing Entity's state.

**14.12.3** 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.

**14.13 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.

**14.14 Survivability.** Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not

limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

**14.15 Discrimination.** Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

**14.15.1** The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. 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 compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

**14.15.2** The 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, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

**14.15.3** The 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 advising the said labor union or workers' representative 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. The 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 noncompliance.

- 14.15.4** The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 14.15.5** The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the 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.
- 14.15.6** In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- 14.15.7** The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 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 No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The 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 noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**14.16 Accessibility.** Vendor hereby warrants that the products or services to be provided under this contract comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Vendor further warrants that the products or services to be provided under this contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

## **XV. Protest**

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective offerors in connection with the solicitations or selection for award of a contract.

Any actual or prospective offeror or contractor, who is aggrieved in connection with solicitation or selection for award of a contract, may file a protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed and mailed to:

**Holly M. Johnson, Secretary  
COMMONWEALTH OF KENTUCKY  
FINANCE AND ADMINISTRATION CABINET  
200 MERO STREET, 5TH FLOOR  
FRANKFORT, KY 40622**

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**Exhibit 1**  
**Description of Goods and/or Services, Prices, and Discount Percentages**  
**SERVICES AND GOODS AVAILABLE UNDER THIS MASTER AGREEMENT**

Contractor has been awarded all products and services in the awarded categories below.

Category	Minimum Discount Percentage
1. Janitorial Supplies, Equipment, and Sanitation Cleaning Chemicals	45%
2. Fasteners	60%
3. Material Handling	35%
4. Plumbing Equipment	45%
5. Power Sources	40%
6. Landscaping and Outdoor Supplies and Equipment	35%
7. Lamps, Lighting, Ballasts, and Equipment	40%
8. Heating, Ventilation, Air Conditioning (HVAC)	35%
9. Hand Tools	40%
10. Power Tools	30%
11. Electrical Supplies and Equipment	45%
12. Paint and Related Supplies	40%
13. Security	40%
14. Safety	40%
15. Other	28%

Products and Services are available to Authorized Purchasers.

Addition or Deletion of Items or Services. The Lead State reserves the right to add new and similar items, by issuing a contract modification, to this contract with the consent of the Contractor. Until such time as the Contractor receives a modification, the Contractor shall not accept delivery orders from any Participating Entity referencing such items or services.

**Return Policy:**

Product can be returned for up to one (1) year from date of invoice if product is in its original packaging, unused, unexpired, undamaged, and in resalable condition, except as noted below.

Proof of Purchase is required in all instances. Fastenal’s motto is Growth Through Customer Service, and in practice the final decision on returns that do not meet our

stated policy is up to the local servicing branch.

Fastenal allows returns for any reason up to 30 days from date of invoice unless otherwise noted. Any returns for shipping errors, damage or loss upon delivery must be reported within 10 days of the delivery date. All returns should be made to a Fastenal branch or as otherwise designated by Fastenal, must be in resalable condition and be accompanied with proof of purchase.

Products sold on a "Final Sale" basis as defined below cannot be returned. "Sourced Product" (defined below) is subject to the manufacturer's return policy and may not be returnable. Some product returns may be denied or made subject to restocking fees and other charges by Fastenal.

**FINAL SALE ITEMS.** Items sold on a "Final Sale" basis include: (i) custom or sourced items; (ii) special-order items; (iii) emergency response items; (iv) items marked in quotations or invoices as "Non-Cancellable" or "Non-Returnable"; and (v) any other items that Fastenal may designate as a "Final Sale" from time to time.

**STATE OF EMERGENCY:** During a State of Emergency (such as a hurricane), some items may be noncancelable, non-refundable, and non-returnable. Purchasing Entities will be notified of these non-returnable items at the time of purchase.

**SOURCED ITEMS.** Sourced items as defined (Sourced product are products which are not currently listed in Fastenal's contract catalog or on-line ordering system but are able to be supplied by Fastenal. Fastenal's sourcing model is a service that we offer to customers to source products. The local Fastenal branch manages the sourcing, procurement, delivery, and, if required, the inventory management of the sourced product as part of a Fastenal vendor managed inventory solution. Fastenal's sourced products are a direct line extension of the product offering consisting of thousands of vendors with whom we have developed a publicly recognized business relationship around promoting and developing the brands representative of the vendor. Price quotes and freight for these sourced products are based on current market conditions and are negotiated locally on a per-order basis and approved by the Participating Entity) which are ordered and delivered to the Purchasing Entity may be non-returnable and non-refundable. Sourced Items that have been ordered by the Purchasing Entity and are non-cancelable by the manufacturer, Purchasing Entity must accept and pay for the delivered quantities, excluding non-conforming items.

## **Exhibit 2**

### **Environmentally Preferred Products**

#### **1.1 Description of Goods and/or Services, Prices and Discount Percentages or Environmentally Preferred Products (if applicable).**

#### **1.2 Terms and Conditions for Environmentally Preferred**

##### **Products Accurate Labeling of Environmentally**

##### **Preferable Products (EPPs)**

Offeror must certify in writing that all claims made about the environmental attributes of the products they are offering are consistent with the Federal Trade Commission's (FTC's) *Guidelines for the Use of Environmental Marketing Terms*. In addition, Offerors may be required to provide documentation, at the request of the Purchasing Entity that the products they are offering meet the Environmental Specifications for this contract.

Over the life of the Master Agreement if awarded, the Offeror must label the environmental attributes of all environmentally preferable products (EPPs) per the Environmental Specifications below in any catalogs, marketing materials, price lists, and online ordering portal associated with this contract. Upon request of the Purchasing Entity, the Offeror if awarded, must provide documentation that each EPP has the required third-party certification(s), minimum amount of recycled content, or other environmental attributes listed in the Environmental Specifications.

The Purchasing Entity reserves the right to require the Offeror if awarded, to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Purchasing Entity under a Master Agreement or Participating Addendum, if awarded.

##### **1.2.2 EPP Sales Reports**

The Purchasing Entity reserves the right to request from the Vendor quarterly sales data over the life of this contract. This information must include details about the environmental attributes of the EPPs sold on this contract consistent with the Environmental Specifications. To facilitate consistent reporting on this contract, the Vendor may be required to submit its sales report using the Purchasing Entity's Green Sales Report Template.

**Training.** Over the life of the contract, the Vendor at a minimum must offer educational/marketing materials and at least one training that can be accessed by contract users explaining its EPP labeling and reporting practices.

**Enforcement.** The Purchasing Entity may consider failure to comply with the Environmental Specifications for this contract as well as the EPP labeling, reporting, and training requirements described above to be grounds for termination of this contract.

### Exhibit 3 NASPO ValuePoint Detailed Sales Data Report Form

Field Name	Field Description
VENDOR	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]
SHIP TO NAME	Customer (agency) Ship to name
SHIP TO ADDRESS	Customer (agency) Ship to address
SHIP TO CITY	Customer (agency) Ship to city
SHIP 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)
SHIP DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Vendor assigned Invoice Number
PRODUCT NUMBER	Product number of purchased product
PRODUCT DESCRIPTION	Product description of purchased product
UNSPSC	Commodity-level code based on UNSPSC code rules (8 Digits)
CATEGORY	Product Category
LIST PRICE/MSRP/CATALOG PRICE	List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
QUANTITY	Quantity Invoiced (99999.999)
TOTAL PRICE	Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$999999999.99)
VAR/Reseller/Distributor	If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Energy Star Compliant	Yes = 1 No = 2 Energy Star Does not Apply = 0
Optional	More information



**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
FASTENAL COMPANY**

**EXHIBIT B  
Scope of Work**

Contractor will provide maintenance, repair, and operations and supplies based on the NASPO ValuePoint Master Contract No. MA 758 2500000414 and State of Arizona Participating Addendum Contract No. CTR074591 on an as-needed basis.

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
FASTENAL COMPANY**

**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

The method and amount of compensation is provided based on Exhibit 1 Description of Goods and/or Services, Prices, and Discount Percentages in the NASPO ValuePoint Master Contract No. MA 758 2500000414.

**NOT TO EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Statement of Work must not exceed \$400,000 for the entire term of the Agreement.

**DETAILED PROJECT COMPENSATION**

See attached pricing list.