

# STATE OF OREGON



## Master Agreement

THE STATE OF OREGON ("STATE"), ACTING BY AND THROUGH ITS DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES ("DAS PS"), for the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint"),  
FOR  
Parks and Recreation Equipment and Related Services

MASTER AGREEMENT  
WITH

Superior International Industries, Inc.

Master Agreement number 6482

This Master Agreement ("Master Agreement") is between the State of Oregon, acting by and through its Department of Administrative Services, Procurement Services ("DAS PS") for the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint") and other Purchasing Entities and Superior International Industries, Inc., a Georgia Corporation ("Contractor").

### **Recitals**

1. DAS PS issued RFP DASPS-2114-16 seeking offers from qualified and responsible contractors to provide to Purchasing Entities Parks and Recreation Equipment and related services ("Parks and Recreation Equipment and Related Services")
2. Contractor submitted a Proposal in response to the RFP offering to provide to Purchasing Entities the described in Exhibit B according to the terms and conditions of this Master Agreement.
3. DAS PS has awarded Contractor this Master Agreement for the Parks and Recreation Equipment and Related Services at the prices set forth in Exhibit B.

### **Agreement**

In consideration of the foregoing recitals and subject to the covenants, terms and conditions set forth below, the parties agree as follows:

#### **Section 1 –Master Agreement**

##### **1.1 Parties**

1.1.1 The only parties to this Master Agreement are Contractor and DAS PS.

1.1.2 Participating States may enter into Participating Addendum with Contractor substantially in the form attached hereto as Exhibit A.

1.1.3 Purchasing Entities may purchase Park and Recreation Equipment and related services as specified in Exhibit B ("Parks and Recreation Equipment and Related Services") by issuing ordering instruments that create and become part of separate contracts ("Contracts") as permitted by Purchasing Entity's laws. The only parties to Contracts created by ordering instruments are the applicable Purchasing Entity and Contractor.

As used in this Master Agreement, "Purchasing Entity" means: a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

##### **1.2 Ordering Process**

1.2.1 Purchasing Entities may order Parks and Recreation Equipment and Related Services during the Term of this Master Agreement using an ordering instrument:

1.2.1.1 Purchasing Entities may use an electronic ordering method as agreed to by Contractor and Purchasing Entity.

1.2.1.2 Purchasing Entities may use their own purchase order forms as ordering instruments as agreed to by Contractor.

1.2.1.3 To be effective, the ordering instrument must specify all of the following:

- Language stating that the ordering instrument is submitted under this Master Agreement (and include the Master Agreement reference number).
- The specific Goods, Services or both and quantity of each item ordered.
- The net price.
- The requested delivery schedule.
- The delivery location(s).
- The invoicing address.
- The Purchasing Entity's authorized representative and relevant contact information, including an e-mail address or fax number.

1.2.2 A Contract created by an ordering instrument consists only of the terms specified or required by this Master Agreement. Additional, different or conflicting terms and conditions in any purchase order(s) or any other form of either a Purchasing Entity or the Contractor may not vary the terms of the Master Agreement. Additional, different or conflicting terms and conditions on a purchase order or other form are of no effect.

1.2.3 Contractor shall accept ordering instruments from Purchasing Entities that comply with the provisions of this Master Agreement until this Master Agreement terminates. Contractor may, but is not required to accept an ordering instrument that requests delivery schedule of less than any minimum lead time (if any) specified in Exhibit B.

1.2.4 An ordering instrument is deemed accepted by Contractor unless Contractor rejects an ordering instrument within 10 business days of the date it is issued. Contractor may reject an ordering instrument: i) using the same means as were used to deliver the ordering instrument, or ii) by e-mail or facsimile if that information is evident on the ordering instrument. Contractor shall specify the reason(s) for rejection.

1.2.5 Accepted ordering instruments establish separate Contracts between the Purchasing Entity and Contractor and include the terms set forth in Sections 2 and 3 of this Master Agreement. As used in the Contracts, "Master Agreement" means this Master Agreement.

1.2.6 The State of Oregon is not obligated or liable under an ordering instrument unless a State of Oregon agency is purchasing Goods, Service or both as the Purchasing Entity.

1.2.7 Nothing in this Master Agreement obligates any Purchasing Entity to place any ordering instrument.

1.2.8 Contractor shall reject an ordering instrument that does not meet the requirements of this Master Agreement.

### **1.3 Prices**

1.3.1 Except as provided in this Section, during the Term of this Master Agreement, Contractor shall offer Goods, Services or both to Purchasing Entities at prices that do not exceed the prices listed in Exhibit B.

1.3.2 Contractor and Purchasing Entity may agree to lower prices for Goods or Services. Those lower prices apply only to applicable Contracts between Contractor and Purchasing Entity.

1.3.3 Goods, Services or both that have been approved and that meet the category standards listed in Exhibit B, may be added or deleted as approved by DAS PS. Contractor or DAS PS may provide a list of goods or services that may be approved and added. DAS PS may prohibit goods or services on this Master Agreement for environmental health or performance reasons, in addition the DAS PS or Contractor may request to add new goods or services that meet the specification in Exhibit B. All goods or services added must be at the same discounts already agreed upon and cannot be lesser than what was agreed upon for each category. However, the discount can always be deeper.

1.3.4. Contractor may request unit price increases from DAS PS no more often than quarterly, commencing after the first year. Contractor must submit a request to the Contract Administrator in writing at least 60 days before the proposed effective date of the increase. The request must show all proposed increases by line item and include supporting documentation acceptable to DAS PS. DAS PS may require Contractor to provide U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data or any other relevant manufacturer or industry data substantiating the increase. Prices based on the manufacturer's list price may change on an annual basis and must be verifiable and auditable from the factory. However, a price increase may not produce a higher profit margin for Contractor than at the beginning of the initial term of this Master Agreement. Other considerations such as increase in usage or decrease will be considered.

**1.4 NASPO ValuePoint Administrative Fee:** Contractor shall remit to NASPO ValuePoint the NASPO ValuePoint Administrative Fee and quarterly sales reports found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Requirements for payment of the NASPO ValuePoint Administrative Fee and usage reporting to NASPO ValuePoint are specified in sections 6 and 7 of the NASPO ValuePoint Master Agreement Terms and Conditions, attached hereto as Exhibit D.

## **1.5 Term of Master Agreement**

1.5.1 The initial term of this Master Agreement begins on the date this Master Agreement has been signed by DAS PS and Contractor and all required approvals have been obtained (the "Effective Date") and ends one year after the Effective Date, unless sooner terminated or extended as provided in this Master Agreement. DAS PS may extend this Master Agreement for additional terms, provided, however, that the total term, including the initial term and all renewals, may not be more than 6 years from the Effective Date. DAS PS will exercise the option to extend, if at all, by giving Contractor written notice of such exercise no later than 30 calendar days before the expiration of the then-current term. The initial term and all extension terms are collectively the "Term" of this Master Agreement.

1.5.2 After this Master Agreement is terminated, Contractor shall not accept new ordering instruments.

1.5.3 Termination of this Master Agreement also terminates ordering instruments in which the Contractor is not legally required to deliver specific quantities of Goods or Services at specific times. The intent of this paragraph is to terminate what is commonly known as a blanket purchase order

(an order that may contain detail of the Goods, but actual sale of Goods is made by periodic releases that specify a date for delivery of specific Goods).

1.5.4 Except as provided in Section 1.5.3, termination of this Master Agreement does not terminate any right or obligation of a party to a Contract that is based on an ordering instrument accepted before termination of this Master Agreement.

1.5.5 DAS PS may terminate this Master Agreement upon 30 calendar days written notice to Contractor for any or no reason.

**1.6 Insurance:** Contractor shall obtain insurance specified in Exhibit C and shall maintain the insurance as required by DAS PS until all Contracts under this Master Agreement are terminated.

## **1.7 Miscellaneous**

1.7.1 NASPO ValuePoint Terms and Conditions. Incorporated herein and attached hereto as Exhibit D are the NASPO ValuePoint terms and conditions.

1.7.2 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Master Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

1.7.3 Designation of Forum and Consent to Jurisdiction. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Master Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County or if the proceeding must be brought in federal court in the United States District Court for the District of Oregon. **Contractor hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.** Nothing in these provisions shall be construed as a waiver of the State of Oregon's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to any legal action or proceedings, or consent to jurisdiction based thereon.

**1.7.4 Amendments:** DAS PS and Contractor may need to modify selected terms, conditions, price(s) and services under this Master Agreement due to the following illustrative, although not exhaustive, categories of anticipated amendments:

- i. Amendments to extend the term of the Master Agreement for additional periods;
- ii. Amendments to add new Goods or Services within the scope of the Master Agreement, if any, at the prices specified within the Master Agreement or at a discount to these prices, or amendments to delete Goods or Services; or
- iii. Amendments to increase or decrease prices for the Goods or Services.

All amendments must be in writing and signed by all approving parties before becoming effective. Only DAS PS has the final authority to execute changes, notices or amendments to the Master Agreement.

**1.7.5 Transfer:** Contractor shall not assign, delegate or otherwise transfer any of its rights or obligations under this Master Agreement without first obtaining the written consent of DAS PS. DAS PS' consent to any subcontract (or other delegation of duties) does not relieve Contractor of any of its duties or obligations under this Master Agreement. This Master Agreement is binding upon and inures to the benefit of each of the parties, and, except as otherwise provided their permitted legal successors and assigns.

**1.7.6 Counterparts:** This Master Agreement may be executed in two or more counterparts, each of which is an original, and all of which together are deemed one and the same instrument. Notwithstanding that all parties are not signatories to the same counterpart.

**1.7.7 Force Majeure:** Neither party is responsible for delay or default caused by an unallocated risk such as fire, riot, and acts of God or war, or by any other cause not within the control of the party whose performance is interfered with, and, which by the exercise of reasonable diligence, the party is unable to prevent. DAS PS may terminate this Master Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of this Master Agreement.

In the event of any such delay, Contractor's obligations are suspended to the extent of and for the duration of such causes. However, Contractor shall take all good faith efforts to eliminate the cause of any such delay, and upon the cessation of such cause, shall resume performance of Contractor's obligations with all reasonable diligence. If necessary, the period for performance under this Master Agreement will be extended to enable Contractor, once such causes have been removed, to fulfill its obligations hereunder.

**1.7.8 Entire Agreement:** This Master Agreement, together with the attached exhibits, constitutes the entire agreement between the parties and merges all prior and contemporaneous communications with respect to the subject matter.

**1.7.9 Notices:** Except as otherwise expressly provided in this Master Agreement, any communications between the parties, or notices to be given under this Master Agreement, are effective only if given in writing by personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Contractor or DAS PS at the address or number set forth below in Sections 4 and 5, or to such other addresses or numbers as either party may later indicate pursuant to this Section. Any communication or notice so addressed and mailed is deemed given five (5) days after mailing. Any communication or notice delivered by facsimile is deemed given on the day the transmitting machine generates a receipt of a successful transmission of the notice, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours. To be effective against DAS PS, any notice transmitted by facsimile must be confirmed by telephone notice to DAS PS's Contract Administrator. Any communication or notice given by personal delivery or express courier is deemed given immediately upon such delivery, provided such delivery is made to the person indicated below.

**1.7.10 Intended Beneficiaries:** DAS PS and Contractor are the only parties to this Master Agreement and are the only parties entitled to enforce its terms. Nothing in this Master Agreement gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this

Master Agreement. Purchasing Entities from the member states of NASPO ValuePoint are intended beneficiaries of this Master Agreement.

**1.7.11 Waiver:** The failure of DAS PS to enforce any provision of this Master Agreement or the waiver of any violation or nonperformance of this Master Agreement in one instance does not constitute a waiver by DAS PS of that or any other provision nor is it a waiver of any subsequent violation or nonperformance. Such failure to enforce waiver, if made, is effective only in the specific instance and for the specific purpose given.

**1.7.12 Certification of Compliance with Tax Laws:** By signature on this Master Agreement for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws and that for a period of no fewer than six calendar years preceding the Effective Date of this Master Agreement, Contractor faithfully has complied with: (i) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**1.7.13 Compliance with Law:** DAS PS' performance under this Master Agreement is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Master Agreement), 279B.230 and 279B.235 (if applicable to this Master Agreement), which are incorporated into this Master Agreement by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Master Agreement, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

**1.7.14 Access to Records:** Contractor shall retain, maintain, and keep accessible all records relevant to this Master Agreement (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Master Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to the Master Agreement or any Contract, whichever date is later. Financial Records will be kept in accordance with Generally Accepted Accounting Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit DAS PS and its duly authorized representatives, and the federal government access to the Records at a reasonable time and place for purposes of examination and copying.

## **Section 2 – Standard Terms for Contracts Under This Master Agreement**

**2.1 Contract Documents; Order of Precedence:** The Contract consists of the ordering instrument and the provisions in Sections 2 and 3. If the terms and conditions in any of the documents conflict, the parties will resolve the conflict using the following order of precedence:

2.1.1 Participating Addendum,

- 2.1.2 Master Agreements, less its exhibits;
- 2.1.3 Exhibit D, NASPO Master Terms and Conditions
- 2.1.4 Exhibit E, Federal Terms and Conditions
- 2.1.5 Exhibit G, Certification of Non-Debarment
- 2.1.6 Exhibit B, Parks and Recreation Equipment
- 2.1.7 Exhibit F, Specifications
- 2.1.8 Exhibit C, Insurance
- 2.1.9 Exhibit A, Participating Addendum form
- 2.1.10 Purchase Order issued against the Master Agreement

**2.2 Payment:** Contractor shall look solely to Purchasing Entity for payment of all amounts that may be due under this Contract. Purchasing Entity is solely responsible for payment under this Contract. Subject to Purchasing Entity's acceptance of Goods or Services or both, payment is due from Purchasing Entity within 45 calendar days after the date of the invoice.

**2.3 Overdue Charges:** At Contractor's option, Contractor may assess overdue account charges to Purchasing Entity up to a maximum rate of two-thirds of one percent per month (8% per annum).

**2.4 Payment Address:** Payments must be sent to the address specified in the Contractor's invoice.

**2.5 Invoices:** Contractor shall invoice Purchasing Entity only after delivery of all Goods ordered and completion and acceptance of all Services. Invoices shall be sent to the address provided by Purchasing Entity for that purpose. Contractor shall include all of the following in its invoice:

- 2.5.1 Master Agreement number.
- 2.5.2 Ordering instrument number.
- 2.5.3 Goods ordered.
- 2.5.4 Date delivered.
- 2.5.5 Volume or quantity of Goods delivered.
- 2.5.6 The price per item of Goods.
- 2.5.7 The total amount invoiced.
- 2.5.8 The address to which payment is to be sent.

**2.6 Prices:** Contractor represents that all prices for Goods or Services under this Contract are equal to or better than the prices listed in the Master Agreement.

**2.7 Cancellation; Inspection and Acceptance:** Purchasing Entity may cancel an order in whole or in part before Goods or Services described in the cancelled whole or part are delivered. Purchasing Entity has ten (10) calendar days from date of delivery of the entire order within which to inspect and accept or reject the Goods or Services. If the Goods or Services are rejected, Purchasing Entity shall provide Contractor with written notice of rejection. Notice of rejection must include itemization of apparent defects, including but not limited to (i) discrepancies between the Goods or Services and the applicable specifications or warranties (including variance from demonstrations or sample characteristics where demonstrations or samples have been provided), or (ii) otherwise nonconforming Goods or Services (including late delivery). Notice of rejection must also specify when cure will be allowed.



2.7.1 Purchasing Entity may elect to have Contractor deliver substitute conforming Goods or Services at no additional cost to the Purchasing Entity. In such an event, Contractor shall deliver substitute conforming Goods or Services within 10 calendar days of receipt of notice of rejection.

2.7.2 If the Goods or Services are rejected or acceptance is revoked, Contractor shall refund any Contract payments that have been made with regard to the rejected Goods or Services, and shall (at Contractor's sole cost and expense) remove the Goods within seven (7) calendar days of receiving notice of rejection or revocation of acceptance.

2.7.3 Nothing contained in Section 2.7 precludes Purchasing Entity from other remedies to which it may be entitled upon rejection or revocation of acceptance.

## **2.8 Representations and Warranties:**

**2.8.1 Officer Status, Insurance:** Contractor represents and warrants that it is not an "officer," "employee," or "agent" of Purchasing Entity, as those terms are used in ORS 30.265. Contractor represents and warrants that Contractor has obtained and will maintain during the term of this Contract all insurance required by the Master Agreement.

**2.8.2 Warranty on Materials, Design, Manufacture:** Contractor represents and warrants that all Goods are new, unused, current production models, and are free from defects in materials, design and manufacture. Contractor further represents and warrants that all Goods are in compliance with and meet or exceed all specifications in Exhibit F to the Master Agreement.

**2.8.3 Warranty on Service Standards:** Contractor warrants that all Services required to be performed, if any, shall be performed in a good and workmanlike manner in accordance with standards prevalent in the industry.

**2.8.4 Warranty of Title:** Contractor represents and warrants that all Goods are free and clear of any liens or encumbrances, that Contractor has full legal title to the Goods, and that no other person or entity has any right, title or interest in the Goods which is superior to or infringes upon the rights granted to Purchasing Entity under this Contract.

**2.8.5 Warranty on Safety and Health Requirements:** Contractor represents and warrants that Goods provided under this Contract comply with all applicable federal health and safety standards, including but not limited to, Occupational Safety and Health Administration (OSHA), and all Oregon safety and health requirements, including, but not limited to, those of the Oregon Consumer and Business Services Department.

**2.8.6 Manufacturer Warranties:** Contractor shall have all manufacturer warranties covering the Goods and component parts, if any, transferred to Purchasing Entity at time of delivery at no charge.

**2.8.7 Warranties Cumulative:** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract. All warranties provided in this Contract are cumulative, and are intended to afford Purchasing Entity the broadest warranty protection available.

## **2.9 Compliance with Applicable Law and Standards:**

**2.9.1** Contractor shall comply with all federal, state and local laws, regulations, and ordinances applicable to this Contract as they may be adopted or amended from time to time, including those set forth on Exhibit E.

**2.9.2 Noncompliant Goods:** In the event of a conflict between the specifications in this Contract and applicable federal or State law, the law prevails. Contractor shall make any modifications required to achieve compliance with law. When Contractor is notified or becomes aware of any required modifications, Contractor shall immediately notify DAS PS and Purchasing Entity.

**2.9.3 Recalled Goods or Components:** In the event any Goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to be in compliance with the applicable specifications, Contractor shall immediately notify DAS PS and Purchasing Entity of the recall or non-compliance, and shall provide copies of the notice or other documentation. Upon notification, Purchasing Entity may elect to do any of the following:

- 2.9.3.1 Cancel any portion of the ordering instrument.
- 2.9.3.2 Reject the Goods.
- 2.9.3.3 Revoke its acceptance of the Goods.
- 2.9.3.4 Require Contractor to complete necessary modifications, where applicable, in a timely manner, at no charge to Purchasing Entity.
- 2.9.3.5 Terminate the Contract.

In the event of rejection or revocation of acceptance under this subsection, Contractor shall promptly remove the Goods at its sole cost and expense, and reimburse Purchasing Entity for any payments made.

**2.10 Foreign Contractor:** If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Purchasing Entity may withhold final payment under the Contract until Contractor has met this requirement.

**2.11 Material Safety Data Sheet:** Contractor shall provide Purchasing Entity at time of delivery with a Material Safety Data Sheet (MSDS) as defined by the Occupational Safety and Health Administration (OSHA) for any Goods provided under the Master Agreement which may release or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must properly label, tag or mark such Goods. Additionally, Contractor shall deliver EPA labels and MSDS information if available and as requested by Purchasing Entities.

**2.12 Time is of the Essence:** Time is of the essence for performance of Contractor's performance obligations under this Contract.

**2.13 Force Majeure:** Neither Purchasing Entity nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Purchasing Entity may terminate this Contract upon written notice to Contractor after reasonably determining that such delay or default will likely prevent successful performance of the Contract.

**2.14 Funds Available and Authorized; Payments:** Purchasing Entity's payment obligations under this Contract are conditioned upon Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Purchasing Entity had sufficient funds available and authorized to make payments under this Contract.

**2.16 Independent Contractor Status; Responsibility for Taxes and Withholding:**

2.16.1 Contractor is an independent contractor. Although Purchasing Entity reserves the right (i) to determine (and modify) the delivery schedule for the Goods or Services or both and (ii) to evaluate the quality of completed performance, Purchasing Entity cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any obligations required by this Contract.

2.16.2 Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Purchasing Entity will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**2.17 Indemnification:**

2.17.1 Contractor shall defend, save, hold harmless, and indemnify Purchasing Entity, the State of Oregon and their officers, employees and agents from and against all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description (collectively, "Claim") which may be brought or made against any Purchasing Entity, the State, or their officers, employees and agents arising out of or related to (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of Contractor, its employees or agents, related to this Contract, (ii) any act or omission by Contractor that constitutes a material breach of this Contract, including without limitation any breach of warranty, or (iii) the infringement of any patent, copyright, trade secret or other Proprietary right of any third party by delivery or use of the Goods. Purchasing Entity or state shall promptly notify Contractor in writing of any claim of which Purchasing Entity or State becomes aware. Contractor's obligation under this section shall not extend to any Claim primarily caused by (i) the negligent or willful misconduct of Purchasing Entity, or (II) Purchasing Entity's modification of Goods without Contractor's approval and in a manner in consistent with the purpose and proper usage of such goods.

2.17.2 The Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, the State or its officers, employees and agents prior to such action or representation. Further, the State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in the State's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending or able to defend the interests of the State, its officers, employees or agents; (iii) important governmental interests are at stake; or (iv) the best interests of the State are served thereby.

Contractor's obligation to pay for all costs and expenses shall include those incurred by the State in assuming its own defense and that of its officers, employees, or agents under (i) and (ii) above.

## **2.18 Breach:**

### **2.18.1 BY CONTRACTOR:** Contractor breaches this Contract if:

- 2.18.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;
- 2.18.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or
- 2.18.1.3 Contractor commits any breach of any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the breach within the period specified in Purchasing Entity's notice of default when Purchasing Entity determines the breach is curable by Contractor.

### **2.18.2 BY PURCHASING ENTITY:** Purchasing Entity breaches this Contract if:

- 2.18.2.1 Purchasing Entity fails to pay Contractor any amount pursuant to the terms of this Contract, and Purchasing Entity fails to cure such failure within ten (10) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or
- 2.18.2.2 Purchasing Entity commits any breach of any covenant, warranty, or obligation under this Contract and such breach is not cured within ten (10) business days after delivery of Contractor's notice of breach or such longer period as Contractor may specify in such notice.

## **2.19 Remedies:**

**2.19.1 PURCHASING ENTITY'S REMEDIES:** If Contractor is in breach under Section 2.18.1, in addition to the remedies afforded elsewhere in this Contract, Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach, including but not limited to direct, indirect, incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. Purchasing Entity may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to:

- 2.19.1.1 Termination of the Contract as provided in Section 2.20.1;
- 2.19.1.2 Withholding all monies due for invoiced Goods that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;
- 2.19.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and
- 2.19.1.4 Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Purchasing Entity's setoff without penalty to Purchasing Entity.

These remedies are cumulative to the extent the remedies are not inconsistent, and Purchasing Entity may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**2.19.2 CONTRACTOR'S REMEDIES:** If Purchasing Entity terminates this Contract, or if Purchasing Entity is in breach under Section 2.18.2 and whether or not Contractor elects to exercise its right to terminate this Contract under Section 2.20.3, Contractor's sole remedy is:

- 2.19.2.1 A claim against Purchasing Entity for the unpaid purchase price for Goods or Services delivered and accepted by Purchasing Entity,
- 2.19.2.2 With respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Purchasing Entity, and
- 2.19.2.3 With respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Purchasing Entity, less previous amounts paid and any claim(s) which Purchasing Entity has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Purchasing Entity upon written demand.

## **2.20 Termination:**

**2.20.1 BY MUTUAL CONSENT:** This Contract may be terminated at any time by mutual written consent of Purchasing Entity and Contractor.

**2.20.2 RIGHTS OF PURCHASING ENTITY:** Purchasing Entity may, at its sole discretion, terminate this Contract for convenience with thirty (30) calendar days written notice. Purchasing Entity may terminate this Contract immediately upon notice to Contractor, or at such later date as Purchasing Entity may establish in such notice, upon the occurrence of any of the following events:

- 2.20.2.1 Purchasing Entity fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract;
- 2.20.2.2 Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by Purchasing Entities under the Master Agreement is prohibited, or Purchasing Entities are prohibited from paying for such Goods from the planned funding sources; or
- 2.20.2.3 Contractor is in breach of this Contract under Section 2.18.1.

Upon receipt of written notice of termination, Contractor shall stop performance under this Contract if and as directed by Purchasing Entity.

**2.20.3 Contractor Remedies:** Contractor may terminate this Contract with a minimum ten (10) calendar days written notice to Purchasing Entity, if Purchasing Entity is in breach of this Contract as described in Section 2.18.2.

**2.21 Access to Records:** Contractor shall retain, maintain, and keep accessible all records relevant to the this Contract (the "Records") for a minimum of six (6) years, or such longer period as may be required by applicable law following expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Financial Records will be kept in accordance with Generally Accepted Accounting

Principles (GAAP). During the record-retention period established in this Section, Contractor shall permit DAS PS, Purchasing Entity, and their duly authorized representative's access to the Records at a reasonable time and place for purposes of examination and copying.

**2.22 Notices:** All notices required under this Contract must be in writing and addressed to the party's authorized representative. For Purchasing Entities, the authorized representative is identified in the ordering instrument. Contractor's authorized representative is Contractor's Contract Administrator identified in the Master Agreement. Mailed notices will be deemed received five (5) business days after post marked, when deposited, properly addressed and prepaid, into the U.S. postal service. If a notice is sent by facsimile, upon receipt by the party giving the notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile machine and number. Personal delivery is effective upon delivery.

**2.23 Ordering Instruments; Acknowledgements:** The parties acknowledge and agree that other than designation of order quantities, types of Goods or Services, delivery destination, dates of order, and scheduled delivery of other performance, any purchase orders or acknowledgement documents are simply for the convenience of the parties to initiate or confirm an order of Goods or Services under this Contract and that no other terms or conditions contained in those documents are of any force or effect or are binding upon the parties.

**2.24 Governing Law:** This Contract is governed by and construed in accordance with the laws of the state of Purchasing Entity, without regard to principles of conflicts of laws.

**2.25 Venue; Consent to Jurisdiction:**

Any Claims between Contractor and a Purchasing Entity that arise from or relate to this Contract order shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such Purchasing Entity resides, or at the Purchasing Entity's option, within such other county as Purchasing Entity is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such Purchasing Entity resides. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of any Purchasing Entity's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution, or otherwise, or of any defenses to Claims or jurisdiction based thereon.

**2.26 Survival:** The following provisions survive termination or expiration of this contract: Sections 2.8, 2.9.3, 2.17, 2.19, 2.21, 2.24, 2.25, 2.27; and Exhibit C ("TAIL" COVERAGE).

**2.27 Severability:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

**2.28 Assignments, Subcontracts and Successors:** Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the

prior written approval of Purchasing Entity. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**2.29 Merger Clause; Amendments:** This Contract constitutes the entire agreement between Contractor and Purchasing Entity on the subject matter of this Contract. There are no understandings, agreements, or representations, oral or written, not specified in this Contract on the subject matter. No amendment of this Contract is valid unless it is in writing and signed by the parties. No waiver or consent is effective unless in writing and signed by the party against whom it is asserted. Waivers and consents are effective only in the specific instance and for the specific purpose given. The failure of Purchasing Entity to enforce any provision of this Contract is not a waiver by Purchasing Entity of that or any other provision.

**2.30 Assignment of Antitrust Rights:** Contractor irrevocably assigns to Purchasing Entity 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 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Contract, including, at Purchasing Entity's option, the right to control any such litigation on such claim or relief or cause of action. Contractor shall require any subcontractors hired to perform any of Contractor's duties under this Master Agreement to irrevocably assign to Purchasing Entity, as third party beneficiary, any right, title or interest that has accrued or which may accrue in the future by reason of any violation of 15 U.S.C. § 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the subcontractor for the purpose of carrying out the subcontractor's obligations to the Contractor in pursuance of this Master Agreement, including, at Purchasing Entity's option, the right to control any such litigation on such claim or relief or cause of action.

### **Section 3 – Special Terms for Contracts Under This Master Agreement**

3.1 Contractor shall include with all Goods delivered all of the following items:

1. Copies of Warranty Certificates.
2. Copies of Assembly Instructions.
3. List of parts and pieces included.

### **Section 4 – Signature of Contractor's Duly Authorized Representative**

The undersigned represents:

- (a) He/she is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Master Agreement and to execute this Master Agreement on behalf of Contractor;
- (b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Master Agreement;
- (c) Contractor will furnish the Goods in accordance with Contracts under this Master Agreement; and
- (d) Contractor shall furnish federal identification number or social security number under a separate document.

(e) All Contractor affirmations contained in its bid or proposal related to this Master Agreement are true and correct.

(f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.

Agreed:

Contractor's Name: Superior International Industries, Inc.

Authorized Signature: Brian Warren

Printed Name of Authorized Signature: Brian J. Warren

Title of Authorized Signature: Chief Financial Officer

Date: 12/1/2016

Administrative Contact (also referred to as Contract Administrator - Type or Print):

KATIE MCDANIEL

Telephone Number of Administrative Contact: (678) 390-1942

Fax Number of Administrative Contact: (770) 214-0747

Email Address of Administrative Contact: katiemcdaniel@groundsforeplay.com

Mailing Address of Administrative Contact: 1050 Columbia Dr

Carrollton, GA 30117

**Section 5 - Signature of DAS PS**

Agreed:

Authorized Signature: Shirley A. Smith

Date: 12-1-16

DAS PS Contract Administrator (Type or Print):

Shirley A. Smith



Telephone Number: (503) 378-5395

Fax Number: (503) 373-1626

Email Address of DASPS Contract Administrator: shirley.smith@oregon.gov

Mailing Address of DASPS Contract Administrator:

Department of Administrative Services-EGS PS

1225 Ferry St SE

Salem, Oregon 97301

APPROVED PURSUANT TO ORS 291.047

By Karen Johnson via email dated  
Assistant Attorney General

Dec 1, 2016  
Date

**Exhibit A**

**Sample NASPO Value Point Participating Addendum incorporated by reference.**

**Exhibit B**  
**Parks and Recreation Equipment and Related Services**  
**Descriptions and Pricing**

Parks and Recreation Equipment and Related Services ("Goods") and Pricing: The Goods available under this Master Agreement and prices are described and set forth on Exhibit B-1.

Credit Card Purchases: Contractor accepts payment by the following credit cards (insert NA if credit cards not accepted):

Visa

MasterCard

American Express

List the early payment discount, if any, Contractor applies to credit card purchase payments received sooner than the standard net thirty (30) days:

  N/A      % Discount   Net days

Discounts: The "Discount" is a fixed percentage discount for Goods and Service purchased.

The discounts stated in the pricing information are effective through the life of the Master Agreement. DAS and Contractor may amend the Master Agreement to reflect Net retail changes, and to add and delete Goods, Services, or both. The Price is FOB to Purchasing Entity location.

When an Purchasing Entity submits a Purchase Order, Contractor shall make available to the Purchasing Entity the greater of the discount or all incentive rebates, standard equipment discounts, optional equipment discounts, and all other discounts offered to the Purchasing Entity by the manufacturer that are not already included in this Exhibit B.

If a discount is available to Purchasing Entity that is higher than the discount specified in this Exhibit B for Parks and Recreation Equipment and Related Services, Contractor shall allow the higher discount. Contractor shall notify the Purchasing Entity of the additional discounts. DAS PS and Purchasing Entity must be able to verify all prices, discounts, and options for the Contract price. Contractor shall provide documentation on request by DAS PS, Purchasing Entity, or both, to support prices, discounts, and options. If a variation in price or discount or option is in dispute, Contractor shall consult directly with the manufacturer and provide, to the Purchasing Entity's satisfaction, written documentation to support the variation. In no case shall Contractor require or shall Purchasing Entity accept changes that are contrary to the pricing specified in this Exhibit B or to any provision of the Master Agreement.

**SERVICES, GENERALLY:** Contractor shall:

Competently and efficiently supervise and coordinate the fulfillment of all Contract requirements;

Identify the Contractor's Representative, who will be either Contractor's "Contract Administrator." Contractor's Contract Administrator or that person's authorized delegate, is the principal point of contact for the Purchasing Entity's representative concerning Contractor's performance under the Contract.

Immediately notify the Purchasing Entity's representative in writing of any change of the designated Contractor's representative assigned to this Contract; and

Be bound by all written communications given to or received from Contractor's Contract Administrator's delegate.

**SERVICES:** When specified in the Purchase Order, Contractor shall provide the following:

Placing delivered Goods in the location designated by the Purchasing Entity, Fixing Goods to walls or supports, if required by the manufacturer, Ensuring that the Goods are level and do not rock or are otherwise unstable, and Connecting the power, water, sewer, and/or other connections necessary to operate the Goods in accordance with the manufacturer's requirements, and ensuring that all connections are secure and, as relevant, free from leaks and any other hazards.

**TRAINING:**

**INITIAL TRAINING FOR OPERATION OF GOODS:** Upon Purchasing Entity's request by Purchase Order, upon delivery of any Capital Equipment, Contractor shall train Purchasing Entity staff who are responsible for operation of this equipment to ensure safe operation. Training shall take place upon initial delivery, and thereafter as ordered by an Purchasing Entity. The Purchasing Entity will issue separate Purchase Orders for additional training generally this training will occur with Capital Equipment purchases and will include the operation of this equipment.

**CUSTOMER SERVICE:** Contractor shall have customer service representatives available during regular business hours, which are 8:00 AM to 5:00 PM Pacific Time, Monday through Friday, excluding State-recognized holidays. Contractor shall respond to faxes and messages left by the Purchasing Entity (either voice mail or email) within 24 hours following receipt, excluding weekends and holidays.

Contractor shall act as the liaison between the manufacturer and Purchasing Entity in resolving warranty claims for Goods.

Contractor shall designate a customer service representative who is responsible for addressing Purchasing Entity issues.

In the case of Goods currently in use by the Purchasing Entity and previously declared manufacturer-discontinued, Contractor shall support the Goods, including replacement Goods, for five (5) years from the date the manufacturer publicly declares the end of sales of the Goods.

## Exhibit C

### Insurance Requirements

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit C to performing under this Master Agreement and shall maintain it in full force and at its own expense throughout the duration of this Master Agreement and any Contract, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

#### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this contract including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

#### **COMMERCIAL GENERAL LIABILITY:**

Required by DAS  Not required by DAS

Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000.00 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.00.

#### **AUTOMOBILE LIABILITY INSURANCE:**

Required by DAS  Not required by DAS.

Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000.00 for bodily injury and property damage.

#### **PROFESSIONAL LIABILITY:**

Required by DAS  Not required by DAS.

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract in an amount not less than \$500,000.00 per occurrence. Annual aggregate limit shall not be less than \$1,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall provide Tail Coverage as stated below.

#### **POLLUTION LIABILITY:**

**When Contractor is Storing Hazardous Material on the Job Site:**

Required by DAS  Not required by DAS.

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required. Combined single limit per occurrence shall not be less than \$\_\_\_\_\_. Annual aggregate limit shall not be less than \$\_\_\_\_\_.

**When Contractor is Transporting (*other than* substances that are of the normal functioning of an automobile), Applying, Using, Disposing or Handling Hazardous Material, but Not Storing it on the Job Site:**

Required by DAS  Not required by DAS.

Pollution Liability Insurance covering Contractor's liability for bodily injury, property damage and environmental damage resulting from either sudden or gradual accidental pollution and related cleanup costs incurred by Contractor, all arising out of the Goods delivered or Services (including transportation risk) performed under this Contract is required.

An endorsement to the Commercial General Liability or Automobile Liability policy, covering Contractor's liability for bodily injury, property damage and environmental damage resulting from sudden accidental pollution and related clean-up cost incurred by the Contractor that arise from the Goods delivered or Services (including transportation risk) performed by Contractor under this Contract is also acceptable.

Combined single limit per occurrence shall not be less than \$\_\_\_\_\_. Annual aggregate limit shall not be less than \$\_\_\_\_\_.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile Liability insurance required under this Contract shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract.

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and DAS's acceptance of all Services required under this Contract, or, (ii) The expiration of all warranty periods provided under this Contract.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to DAS Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. **The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided.** As proof of insurance DAS has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

**NOTICE OF CHANGE OR CANCELLATION:**

The contractor or its insurer must provide at least 30 days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by DAS under this agreement and to provide updated requirements as mutually agreed upon by Contractor and DAS.

## Exhibit D



### NASPO Master Terms and Conditions

#### **1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the documents listed in Section 2.1 of the Master Agreement, with conflicts resolved using the order of precedence therein.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

#### **2. Definitions**

**Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

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

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

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

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

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating



Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

**Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Purchasing Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## **NASPO ValuePoint Program Provisions**

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

a. The initial term of this Master Agreement begins on the date of execution of the Master Agreement and ends one year after the Effective Date, as set forth in section 1.5 of the Master Agreement. Provisions for extension for additional terms are also set forth in section 1.5.1.

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

### ***4. Amendments***

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

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

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by Participating Entity's state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

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

g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

## **6. Administrative Fees**

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

## **7. NASPO ValuePoint Summary and Detailed Usage Reports**

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

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

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

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

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

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

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

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractor's website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

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

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All prices and rates must be guaranteed for the initial one-year term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment are governed by section 1.3.4 of the Master Agreement. No retroactive adjustments to prices or rates will be allowed.

## **12. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering**

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

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement

Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

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

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

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

#### **14. Shipping and Delivery.**

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. 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 other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

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

## **15. Laws and Regulations**

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

## **16. Inspection and Acceptance.**

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

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

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance 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. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, 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. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

## **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance,

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

## **18. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

## **19. Title of Product**

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

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

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

## **General Provisions**

### **21. Insurance**

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be as specified in Exhibit C of the Master Agreement.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence

acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

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

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

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

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

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

## **23. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.



b. **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

## ***24. Public Information.***

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

## ***25. Assignment/Subcontracts***

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

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

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

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

## ***27. Independent Contractor***

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

## **28. [Reserved]**

## **29. Force Majeure**

***Events of force majeure are governed by sections 1.7.7 and 2.13 of the Master Agreement.***

## **30. Defaults and Remedies**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless other 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 have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

## **31. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be

construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **32. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency, as set forth on Exhibit G. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **33. Indemnification**

a. The Contractor's obligation to indemnify the State of Oregon and Purchasing Entities is set forth in section 2.17 of the Oregon Master Agreement.

### **34. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

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

### **35. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

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

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

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

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

### **37. Contract Provisions for Orders Utilizing Federal Funds.**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

### **38. eMarket Center**

a. This Section applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Contractor's Interface with the eMarket Center. There is no cost charged by SciQuest to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and SciQuest to set up an enablement schedule, at which time SciQuest's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and SciQuest will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to SciQuest, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data [Insert Time Frame Here] to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update [every Insert Time Frame Here] to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year. The following conditions apply with respect to hosted catalogs:

(1). Updated pricing files are required by the 1st of the month and shall go into effect in the eMarket Center on the [1st day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 2/01/13)]. Files received after the 1st of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 1/01/10).

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the SciQuest Supplier Network (SQSN) and shall use the SciQuest's Supplier Portal to import the Contractor's catalog and pricing, into the SciQuest system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the SciQuest Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain 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 the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract between the Contractor and the Contract Administrator; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although contractors in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a contractor may have different pricing for state government agencies and Board of Regents institutions. Contractors have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by SciQuest for the contractors and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity. More information about the UNSPSC is available at: <http://www.unspsc.com> and <http://www.unspsc.com/FAQs.asp#howdoesunspscwork>.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any contractor's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. 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 (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate SciQuest eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the contractor agrees to take commercially reasonable efforts to enable such separate SciQuest catalogs.

## Exhibit E

### Federal Terms and Conditions

Without limiting the generality of Section 2.9 of the Master Agreement, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Master Agreement and all Contracts, all references to federal laws are references to federal laws as they may be amended from time to time.

(1) Equal Employment Opportunity. If any Contract issued under this Master Agreement, including amendments, is for more than \$10,000, then Contractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(2) Clean Air, Clean Water, EPA Regulations. If this any Contract issued under this Master Agreement, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the DASPS or Participating Entity, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

(3) Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(4) Truth in Lobbying. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

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

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contract issued under this Master Agreement or shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

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

(5) HIPAA Compliance. If the work performed under a Contract issued under this Master Agreement are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), Contractor agrees to perform the work in compliance with HIPAA. Without limiting the generality of the foregoing, work performed under a Contract issued under this Master Agreement is covered by HIPAA. Contractor shall comply and cause all subcontractors to comply with the following:

A. Privacy and Security Of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and DASPS or Participating Entity for purposes directly related to the provision of services to clients which are funded in whole or in part under the Contract issued under this Master Agreement. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate the State of Oregon Privacy Rules, OAR 407-014-0000 et. seq., or the State of Oregon Notice of Privacy Practices, if done by Agency. A copy of the most recent State of Oregon Notice of Privacy Practices is posted at <http://www.oregon.gov/OHA>, or may be obtained from DASPS.

B. Data Transactions Systems. If Contractor intends to exchange electronic data transactions with DASPS or Participating Entity in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDI Trading Partner Agreement with DASPS or Participating Entity and shall comply with the State of Oregon EDI Rules.

C. Consultation and Testing. If Contractor reasonably believes that the Contractor's or the DASPS' or Participating Entity's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the DASPS' or Participating Entity's HIPAA officer. Contractor or DASPS or Participating Entity may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DASPS' or Participating Entity's testing schedule.

D. If Contractor is deemed to be a business associate of DASPS or Participating Entity under HIPAA's Privacy Rule, 45 CFR Parts 160 and 164, Contractor hereby provides DASPS or Participating Entity with satisfactory assurances that if it receives from DASPS or Participating Entity or any trading partner any protected health information of any individual, it shall maintain the security and confidentiality of such information as required by the HIPAA's Privacy Rule, and other applicable laws and regulations. Without limiting the foregoing, Contractor agrees that:



- a. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Master Agreement or Contract or as required by law;
- b. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Master Agreement or Contract;
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Master Agreement or Contract;
- d. Contractor will report to DASPS or Participating Entity any use or disclosure of PHI not provided for by this Master Agreement or Contract of which Contractor becomes aware;
- e. Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;
- f. Contractor shall make available to DASPS or Participating Entity such information as they may require to fulfill their obligations to account for disclosures of such information;
- g. Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the DASPS or Participating Entity or trading partner (or created or received by Contractor on behalf of DASPS or Participating Entity or trading partner) available to DASPS or Participating Entity and to the Secretary of the United States Department of Health and Human Services, for purposes of determining DASPS or Participating Entity's or trading partners' compliance with HIPAA; and
- h. If feasible, upon termination of this Master Agreement or Contract, Contractor shall return or destroy all PHI received from DASPS or Participating Entity or trading partners (or created or received by Contractor on behalf of DASPS or Participating Entity or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Master Agreement or Contract to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

Subject to the foregoing restrictions, DASPS or Participating Entity agrees that Contractor may use such PHI in the process of providing transaction mapping, trading partner profiling and training and mentoring services for DASPS or Participating Entity and trading partners under this Master Agreement or Contract.

(6) Resource Conservation and Recovery. Contractor shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

(7) Substance Abuse Prevention and Treatment. Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

(8) Audits. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

(9) Debarment and Suspension. Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

(10) Medicaid Compliance. To the extent Contractor performs any work whose costs are paid in whole or in part by Medicaid, Contractor shall comply with and cause its subcontractors to comply with the federal and State Medicaid statutes and regulations applicable to the work, including but not limited to:

- a. Keeping such records as may be necessary to disclose the extent of services furnished to clients and, upon request, furnish such records or other information to DASPS or Participating Entity, the Medicaid Fraud Control Unit of the Oregon Department of Justice and the Secretary of Health and Human Services;
  - b. Complying with all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
  - c. Complying with any applicable advance directive requirements specified in 42 CFR section 431.107(b)(4); and
  - d. Complying with the certification requirements of 42 CFR sections 455.18 and 455.19.
- Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the record keeping and reporting requirements set forth in this section and with the federal laws identified in this section.

(11) ADA. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

(12) Pro-Children Act. Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

(13) FTI. Contractor shall comply with the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq. related to federal tax information.

(14) FERPA. Contractor shall comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)

## Exhibit F Specifications

Safety, in the context of playgrounds, is generally understood as the prevention of injuries. Risk aversion and fear of lawsuits on the part of the adults who design playgrounds prioritizes injury prevention above other factors, such as cost or developmental benefit to the users. It is important that children gradually develop the skill of risk assessment, and a completely safe environment does not allow that.

Sometimes the safety of playgrounds is disputed in school or among regulators. Over at least the last twenty years, the kinds of equipment to be found in playgrounds has changed, often towards safer equipment built with plastic. For example, an older jungle gym might be constructed entirely from steel bars, while newer ones tend to have a minimal steel framework while providing a web of nylon ropes for children to climb on. Playgrounds with equipment that children may fall off often use mulch on the ground to help cushion the impact.

Playgrounds are also made differently for different age groups. Often schools have a playground that is taller and more advanced for older schoolchildren and a lower playground with less risk of falling for younger children.

Also concerning the safety of playgrounds is the material in which they are built. Wooden playgrounds act as a more natural environment for the children to play but can cause even more minor injuries. Splinters are the main concern when building with wood material. Wet weather is also a threat to children playing on wooden structures. Most woods are treated and do not wear terribly fast, but with enough rain, wooden playgrounds can become slippery and dangerous for children to be on.

**Regulation:** In the United States, the Consumer Product Safety Commission and the American National Standards Institute have created a Standardized Document and Training System for certification of Playground Safety Inspectors. These regulations are nationwide and provide a basis for safe playground installation and maintenance practices. ASTM F1487-07 deals with specific requirements regarding issues such as playground layout, use zones, and various test criteria for determining playground safety. ASTM F2373 covers public use play equipment for children 6-24 months old. This information can be applied effectively only by a trained C.P.S.I. A National Listing of Trained Playground Safety Inspectors is available for many states. A Certified Playground Safety Inspector (CPSI) is a career that was developed by the National Playground Safety Institute (NPSI) and is recognized nationally by the National Recreation and Park Association or N.R.P.A.

All equipment goods and services shall conform to NRPA guidelines.

Modern playgrounds often have recreational equipment such as the seesaw, merry-go-round, swing set, slide, jungle gym, chin-up bars, sandbox, spring rider, trapeze rings, playhouses, and mazes, many of which help children develop physical coordination, strength, and flexibility, as well as providing recreation and enjoyment. Common in modern playgrounds are play structures that link many different pieces of equipment.

Playgrounds often also have facilities for playing informal games of adult sports, such as a baseball diamond, a skating arena, a basketball court, or a tether ball.

Public playground equipment refers to equipment intended for use in the play areas of parks, schools, child care facilities, institutions, multiple family dwellings, restaurants, resorts, and recreational developments, and other areas of public use.

Additional QC requirements:

**IPEMA:** the International Playground Equipment Manufacturers Association, provides 3rd party Product Certification services for U.S. and Canadian public play equipment <http://www.ipema.org>

**CPSC:** Consumer Product Safety Commission: official Federal Agency website, including recalls, reports, alerts <http://www.cpsc.gov>

**ASTM:** ASTM International, known until 2001 as the American Society for Testing and Materials (ASTM), is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services <http://www.astm.org>

**ISO:** The International Organization for Standardization (ISO) is an international standard-setting body composed of representatives from various national standards organizations <http://www.iso.org/>

**ADA:** The Americans with Disabilities Act of 1990[1][2] (ADA) is a law that was enacted by the U.S. Congress in 1990. Senator Tom Harkin (D-IA) authored the bill and was its chief sponsor in the Senate. Harkin delivered part of his introduction speech in sign language, saying it was so his deaf brother could understand. It was signed into law on July 26, 1990, by President George H. W. Bush, and later amended with changes effective January 1, 2009 [www.ada.org](http://www.ada.org)

**CSA:** <http://www.csa-international.org> (Canadian) **TUV** [http://www.tuvglobal.com/\(EU\)](http://www.tuvglobal.com/(EU))

The **National Recreation and Park Association (NRPA)** provides information and services to communities in the United States attempting to make them conscious of the environment around them. It supports the construction of parks and recreational facilities around the United States. It has been active for over 40 years.

"All, manufacturers of children's products sold in Oregon will be required to disclose to the Oregon Health Authority when a product Contains a chemical included on the authority's list of high priority chemicals of concern. This list will conform to the Washington Department of Ecology's reporting list, established under their 'Children's Safe Products Act'" and must conform to Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on the effective date of this 2015 Act" Proposer is to describe its conformance to those requirements"

**ADVERTISING:** Contractor shall place no advertising, such as Contractor's name, logo or emblems on Goods. Contractor shall reimburse Purchasing Entity for any costs incurred for removal of advertising from any Good.

## Exhibit G

### **Certification of Non-Debarment**

By signing and submitting this Proposal, the Proposer is providing the certification set out below.

This certification is a material representation of fact upon which reliance was placed when this Proposal and the Master Agreement was submitted and entered into. If it is later determined that the Proposer knowingly rendered an erroneous certification, in addition to other remedies available to DAS and the members of the NASPO ValuePoint, DAS, the Participating State or the Purchasing Entity, as applicable with which this Proposal, Master Contract, Participating Addendum, or Contract (ordering instrument) originated may pursue available remedies, including suspension and/or debarment.

1. The Proposer shall provide immediate written notice to the person to which this Proposal is submitted if at any time the Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

2. The Proposer agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DAS, the Participating State or the Purchasing Entity, as applicable with which the particular transaction originated.

3. The Proposer further agrees by submitting this Proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

4. A Proposer in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Proposer may decide the method and frequency by which it determines the eligibility of its principals. Each Proposer may, but is not required to, check the Nonprocurement List.

5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

6. Except for transactions authorized under paragraph 4, if a Proposer in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to DAS, the Participating State or the Purchasing Entity, as applicable with which the particular transaction originated may pursue available remedies, including suspension and/or debarment.

The Proposer certifies, by submission of this Proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Proposal.

Business Name Superior International Industries, Inc.

Date 12/1/2016

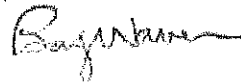
By

Name and Title of Authorized Representative

Brian J. Warren

Chief Financial officer

Signature of Authorized Representative



**PARTICIPATING ADDENDUM  
NASPO ValuePoint**

**PARKS & RECREATION EQUIPMENT AND RELATED SERVICES**

Administered by the State of Oregon (hereinafter "Lead State")

**MASTER AGREEMENT**

**Master Agreement No: 6482**

**Superior International Industries, Inc.**  
(hereinafter "Contractor")

and

**State of Washington**  
(hereinafter "Participating State")

**Washington Master Contract No.: 04216**

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Superior International Industries, Inc., a Georgia Corporation ("Contractor"), and is dated and effective as of January 1, 2017.

1. **SCOPE:** This Participating Addendum covers the acquisition of Parks & Recreation Equipment and Related Services included in the above referenced Master Agreement led by the State of Oregon for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities"):
  - (a) **WASHINGTON STATE AGENCIES.** Washington state agencies, departments, offices, divisions, boards, and commission; and any the following institutions of higher education in Washington: state universities, regional universities, state college, community colleges, and technical colleges.
  - (b) **MCUA PARTIES.** The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
    - Political subdivisions (e.g., counties, cities, school districts, public utility districts);
    - Federal governmental agencies or entities;
    - Public-benefit nonprofit corporations (i.e., § 501(c) (3) nonprofit corporations that

receive federal, state, or local funding); and

- Federally-recognized Indian Tribes located in the State of Washington.

**3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:**

3.1. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services' Electronic Business Solutions (WEBS) System at <https://fortress.wa.gov/ga/webcust/home.html>. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.

3.2. **WASHINGTON'S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington's Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).

3.3. **CONTRACT SALES REPORTING.** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

(a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services' Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number.

(b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.

(c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

<b>For Calendar Quarter Ending</b>	<b>Contract Sales Report Due</b>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

Amount owed to Enterprise Services = Total contract sales invoiced (not



including sales tax) x .015.

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
  - This Washington Master Contract No.: **04216**
  - The NASPO Master Agreement No.: **6482**
  - The year and quarter for which the VMF is being remitted, and
  - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

4. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor	Participating State
Superior International Industries, Inc. 1050 Columbia Drive Carrollton, GA 30117	State of Washington Department of Enterprise Services Contracts, Procurement and Risk Mgmt. P.O. Box 41411 Olympia, WA 98504-1411
Attn: Katie McDaniel Tel: (678) 390-1942 Email: <a href="mailto:katiemcdaniel@groundsforplay.com">katiemcdaniel@groundsforplay.com</a> or <a href="mailto:kmcdaniel@siibrands.com">kmcdaniel@siibrands.com</a>	Attn: Leslie Edwards Tel: (360) 407-8416 Email: <a href="mailto:leslie.edwards@des.wa.gov">leslie.edwards@des.wa.gov</a>

5. **SUBCONTRACTORS:** All Contractor's Distributors authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
6. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.
7. **GENERAL:**
- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
  - (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
  - (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
  - (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES

SUPERIOR INTERNATIONAL INDUSTRIES, INC.,  
A GEORGIA CORPORATION

By:

  
Cheral Manke

Its:

Purchasing Manager

By:

  
Brian Warren

Its:

Chief Financial Officer