

**Contract number 05214 – NASPO Copiers, Printer & Related Devices**

Led by Nevada, NASPO ValuePoint formerly WSCA-NASPO Master Agreement #3091

**Date Issued:** January 18, 2018

**Effective Date:** January 18, 2018

**Contractors Names:** Canon USA, Inc.  
Hewlett Packard  
Konica Minolta Business Solutions USA, Inc.  
Ricoh USA, Inc.  
Sharp Electronics Corporation  
Xerox Corporation  
Toshiba

Maximum Term Date:	December 31, 2019
Contract Manager:	Breann Aggers
Email:	<a href="mailto:breann.aggers@des.wa.gov">breann.aggers@des.wa.gov</a>
Phone:	(360) 407-9416
<b>Purpose:</b>	<b>18 Jan: Update Sharp Electronics Corporation manufacture contact information.</b>

The NASPO Copiers, Printers and Related Devices contract was awarded by "Group". Groups are described below:

GROUP	DESCRIPTION
A	<b>Convenience Copiers</b> - A machine that makes exact paper copies of printed or graphic materials in black and white only.
B	<b>Production Copiers</b> - A machine that makes exact paper copies of printed or graphic materials in black and white and more than one color.
C	<b>Wide Format</b> - A printer that prints larger than 11x17 paper, which typically use ink jet technology to print on a variety of output mediums.
D	<b>Printers</b> - Device does not copy as the primary function and does not allow 11x17 paper. Printer shall include an inkjet or laser-printer print engine. Printer equipment may include the function of network printing as the primary function and the functionalities of copying/scanning/faxing (or e-fax) as a convenience.
E	<b>Digital Duplicators</b> - High production device with a stencil ink and a drum. Devices making use of templates to create large volume of documents quickly at the lowest cost per copy.
F	<b>Scanners</b> - A device used to convert paper documents into digital images

Awarded Contractors	Group	WA Participating Addendum's
<b>Canon USA, Inc.</b> <b>Dave Rothauer</b> (631) 330-5443 <a href="mailto:isgbidadmin@cusa.canon.com">isgbidadmin@cusa.canon.com</a>	A, B, C, D, F	<a href="#">CANON PA</a>
<b>Hewlett Packard</b> <b>Debra Lee</b> (847) 537-0344 <a href="mailto:debra.lee@hp.com">debra.lee@hp.com</a>	D	<a href="#">HP PA</a>
<b>Konica Minolta Business Solutions USA, Inc.</b> <b>Jack Dixon</b> 703-760-3584 <a href="mailto:jack.dixon@kmbs.konicaminolta.us">jack.dixon@kmbs.konicaminolta.us</a>	A, B, D	<a href="#">KONICA MINOLTA PA</a>
<b>Ricoh USA, Inc.</b> <b>Todd Marron</b> (503) 747-6653 <a href="mailto:todd.marron@ricoh-usa.com">todd.marron@ricoh-usa.com</a>	A, B, C, D, E	<a href="#">RICOH PA</a>
<b>Sharp Electronics Corporation</b> <b>Anthony Massey</b> (303) 601-1931 <a href="mailto:MasseyA@Sharpsec.com">MasseyA@Sharpsec.com</a>	A, B	<a href="#">SHARP PA</a>
<b>Xerox Corporation</b> <b>Rachael Jones Turner</b> (310) 258-6266 <a href="mailto:Rachael.Jones@Xerox.com">Rachael.Jones@Xerox.com</a>	A, B, D	<a href="#">XEROX PA</a>
<b>Toshiba</b> <b>Christina Fisher</b> (949) 462-6325 <a href="mailto:Christina.fisher@tabs.toshiba.com">Christina.fisher@tabs.toshiba.com</a>	A	<a href="#">TOSHIBA PA</a>

**Basic Contract information is below. Each Vendor may have specific requirements that are different based on their Agreement with NASPO and Washington's Participating Addendum. For Vendor specific information please see the documents on page 2 and 3 of this Current Contract Information (CCI).**

## **1 DEALERS/DISTRIBUTORS**

All equipment, accessories and software provided under this Contract may be installed, serviced and billed through each Manufacturer's local dealers or directly from the Manufacturer. A complete list of Authorized Dealers by Manufacturer is listed in Appendix A. Contractor shall provide the Contract Administrator for the Participating State a list of all such local dealers, including the following dealer information:

- Company Name
- Company Address
- Company Phone Number
- Primary Contact Name, email address, phone number
- Alternate Contact Name, email address, phone number

## **2 PURCHASING OPTIONS**

Any equipment acquired under this contract must follow the Office of Financial Management (OFM) Statewide Administrative & Accounting Manual (SAAM) policy 30.20.

Contractor shall offer only the following financial vehicles, as defined in the NASPO ValuePoint RFP 3091 and modified immediately below:

- 2.1 Cancellable Rental - A cancellable rental shall meet the financial requirements of an Operation Lease but shall be cancellable given 30 days written notice to the Awarded Vendor at any point during the rental term with or without penalty.
- 2.2 Capital Lease  
A capital lease is classified by the Customer as a purchase and must meet one or more of the following criteria:
  - The lease term is greater than 75% of the property's estimated economic life.
  - The lease contains an option to purchase the property for less than fair market value.
  - Ownership of the property is transferred to the Customer at the end of the lease term.
  - The present value of the lease payment exceeds 90% of the fair market value of the property.
  - Such leases shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value must be disclosed to the Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.
- 2.3 Fair Market Value Lease - The customer may purchase the device at the end of the term at the then Fair Market Value. All fair market value leases shall have an end of term buyout to own value that is determined by the then current market price. Such leases shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value must be disclosed to the Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.
- 2.4 Non-Cancellable Rental - The customer may not purchase the device at the end of the initial, or any subsequent renewal term. All non-cancellable rentals shall not have a buyout to own option and all Customers will be remitting payment for the usage of the device only. Such rentals shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value shall never reach a value that would result in the transfer of the asset to the Customer.

The depreciated value must be disclosed to the Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.

2.5 Operational Lease - Operational lease is used to acquire devices on a relatively short term basis with no benefit of ownership to the lessee; no buy-out will be considered.

2.6 Short Term Rental - A Short Term Rental shall:

- Meet the financial requirements of an Operational Lease but shall be cancelable given 30 days written notice to the Awarded Vendor at any point during the rental term.
- Not exceed a total term of 18 months for Used or Refurbished devices.

### **3 PAYMENT TO THE CONTRACTOR**

Contractors are required to be registered in the Washington Statewide Vendor Payee system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Department of Enterprise Services (DES) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to

<http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/statewideVendors.aspx> and submit your form as instructed.

### **4 OVERPAYMENT TO THE CONTRACTOR**

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within 30 days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

#### **4.1 ADVANCED PAYMENT PROHIBITED**

No advance payment shall be made for goods or services furnished by Contractor pursuant to this Contract.

### **5 Equipment End of Life/Term**

*Hard Drive* – All Manufacturers do not handle the removal of the hard at the equipment's end of life in the same manner. For specifics regarding each Manufacturer's process and any costs associated with the removal/destruction of the hard drive, see their NASPO ValuePoint Master Agreement.

*Equipment Removal* – All Manufacturers do not handle the removal of equipment at the end of term in the same manner. For specifics regarding each Manufacturer's process and any costs associated with the removal of equipment at the end of term/life, see their NASPO ValuePoint Master Agreement.

*Purchasing "Used" Equipment* – For information regarding the purchase of used equipment at the end of the equipment's life, see the following link: <http://www.tre.wa.gov/government/leasePurchaseProgram.shtml>.

### **6 DEDICATED CONTRACT WEBSITE**

Contractor shall maintain an internet website dedicated to the Participating State. In addition to the items listed in the NASPO ValuePoint Master Agreement, the dedicated website shall include:

Identification of the NASPO ValuePoint Master Agreement and Participating State's Participatory Addendum by title and number,

Name and contact information for the Participatory State's Contract Administrator,

Contractor contact information, Contractor's single point of contact for contract administration, orders for product and service, and problem resolution, and On-line order processing.

## 7 ENVIRONMENTAL REQUIREMENTS

No equipment shall contain polybrominated biphenyls (PBB) or diphenyl ethers (PBDE) fire retardants or other identified persistent bioaccumulative toxic substances (PBT's), or rely on PBT's in their operation or maintenance. All equipment shall must meet US EPA Energy Star Program (Tier II for standard size and Tier III for large format compliant) requirements or otherwise be compliant with program requirements

## 8 TAXES, LICENSES, AND FEES

### 8.1 TAXES

Where required by statute or regulation, the Contractor shall pay for and maintain in current status, all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for Federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

### 8.2 COLLECTION of RETAIL SALES and USE TAX

In general, Contractors engaged in retail sales activities within the Participating State are required to collect and remit sales tax to the Washington State [Department of Revenue](#) (DOR). In general, out-of-state Contractors must collect and remit "use tax" to [the](#) DOR if the activity carried on by the seller in the Participating State is significantly associated with Contractor's ability to establish or maintain a market for its products in the Participating State. Examples of such activity include where the Contractor either directly, or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business; or
- Maintains an in-state inventory or stock of goods for sale; or
- Regularly solicits orders from Purchasers located within the Participating State via sales representatives entering the Participating State; or
- Sends other staff into the Participating State (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in [WAC 458-20](#)

Department of Revenue (DOR) Registration for Out-of-State Contractors

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the DOR. Refer to [WAC 458-20-193](#) and call the DOR at (800) 647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the Participating State are responsible for paying this tax, if applicable, directly to the DOR.

### 8.3 Fees/Licenses:

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of the resulting Contract.

### 8.4 Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with [WAC 458-20-247](#).

## 9 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator of the Participating State.

## 10 PROTECTION of PURCHASER's CONFIDENTIAL INFORMATION

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public

or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes (“Confidential Information”). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser’s express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser’s option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser’s Confidential Information.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor’s records shall be subject to inspection, review or audit in accordance with Review of Contractor’s Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## **11 AUDIT**

The State reserves the right to audit, or have a designate third party audit, all records of Contractor or its Subcontractors relating to Contractor’s or Subcontractor’s performance under this Contract, to ensure appropriate contract activity, to verify that the State has been properly invoices, or to comply with any other contract requirements.

Any remedies available under this Contract or allowed by law to recover monies determined owed will be enforced, including the full cost of any third-party audits, should any breach occur. Repetitive instances of incorrect invoicing or any instance of any non-authorized contract activity may be considered material breach and cause for contract suspension and/or termination.

## **12 NON-ENDORSEMENT and PUBLICITY**

Neither the Participating State nor the Purchasers are endorsing the Contractor’s Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the Participating State or any of its Purchasers in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent from the Contract Administrator of the Participating State.

## **13 GOVERNING LAW/VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the Participating State, and the venue of any action brought hereunder shall be in the County of Thurston, State of Washington.

## **14 INDEPENDENT STATUS of CONTRACTOR**

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship will be created by this Contract. The employees or agents of one party shall not be

deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under [Chapter 41.06 RCW](#), or [Title 51 RCW](#).

**ACRONYMS/DEFINITIONS**

The following acronyms and definitions apply to this Request for Proposals (RFP) and any subsequent contracts.

<b>Acronym</b>	<b>Description</b>
<b>Acceptance</b>	A written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.
<b>Acceptance Testing</b>	The process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance of the NASPO ValuePoint Master Agreement Terms and Conditions, prior to Acceptance by the Purchasing Entity.
<b>Accessory</b>	Any item that may be added to the base marking engine.
<b>Assumption</b>	An idea or belief that something will happen or occur without proof. An idea or belief taken for granted without proof of occurrence.
<b>Authorized Dealer (“dealer”)</b>	Authorized dealer (hereafter referred to as “dealer”) will be defined as a manufacturer’s authorized sales and service center that must be certified by the manufacturer to sell the manufacturer’s products, perform machine installation and maintenance on machines offered by the manufacturer at the time of bid. A Customer must be able to, at a minimum, be able to visit the sales and service center to view and test models.  This term encompasses “Value Added Resellers (VARs), Distributors, Resellers, Local Dealers, Partner, Franchise, etc.”
<b>Awarded Vendor</b>	The organization/individual that is awarded and has an approved contract from the State of Nevada for the services identified in this RFP.
<b>BOE</b>	State of Nevada Board of Examiners
<b>Cancelable Rental</b>	A cancelable rental shall meet the financial requirements of an Operation Lease but shall be cancelable given 30 days written notice to the Awarded Vendor at any point during the rental term with or without penalty.
<b>Capital Lease</b>	A capital lease is classified by the Customer as a purchase and must meet one or more of the following criteria: <ul style="list-style-type: none"> <li>• The lease term is greater than 75% of the property’s estimated economic life.</li> <li>• The lease contains an option to purchase the property for less than fair market value.</li> <li>• Ownership of the property is transferred to the Customer at the end of the lease term.</li> <li>• The present value of the lease payment exceeds 90% of the fair market value of the property.</li> <li>• Such leases shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value must be disclosed to the Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.</li> </ul>



Acronym	Description												
<b>Confidential Information</b>	Any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost or price submitted in support of a bid or proposal. The term does not include the amount of a bid or proposal. Refer NRS 333.020(5) (b).												
<b>Contract Approval Date</b>	The date the State of Nevada officially approves and accepts all contract language, terms and conditions as negotiated between the State and the Awarded Vendor.												
<b>Contract Award Date</b>	The date when vendors are notified that a contract has been successfully negotiated, executed and is awaiting approval of the Board of Examiners.												
<b>Contractor</b>	The company or organization that has an approved contract for delivering Products or performing services under the terms and conditions set for in the NASPO ValuePoint Master Agreement. The contractor has full responsibility for coordinating and controlling all aspects of the contract, including support to be provided by any subcontractor(s). The contractor will be the sole point of contact with the State relative to contract performance.												
<b>Cross Reference</b>	A reference from one document/section to another document/section containing related material.												
<b>Customer</b>	State governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.												
<b>Division/Agency</b>	The Division/Agency requesting services as identified in this RFP.												
<b>Embedded Software</b>	One or more software applications which permanently reside on a device.												
<b>Engineering Drawing Sizes</b>	<p>The following engineering drawing sizes will be utilized:</p> <table border="1" data-bbox="639 1031 1102 1262"> <thead> <tr> <th colspan="2">U.S. Customary Drawing Sizes</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>8.5" x 11"</td> </tr> <tr> <td>B</td> <td>11" x 17"</td> </tr> <tr> <td>C</td> <td>17" x 22"</td> </tr> <tr> <td>D</td> <td>22" X 34"</td> </tr> <tr> <td>E</td> <td>34" X 44"</td> </tr> </tbody> </table>	U.S. Customary Drawing Sizes		A	8.5" x 11"	B	11" x 17"	C	17" x 22"	D	22" X 34"	E	34" X 44"
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<b>EPEAT</b>	Electronic Product Environment Assessment Tool. EPEAT registered means products that have been decaled to meet the requirements of IEEE 1680.2, Standard for Environmental Assessment of Imaging Equipment.												
<b>Equipment Downtime</b>	Equipment downtime will be defined as the period of time a piece of equipment is waiting for service to be completed.												
<b>Equipment Functions and Options</b>	<p>The following definitions shall prevail for the various copier functions and options:</p> <ul style="list-style-type: none"> <li>• Automatic Document Feeder (ADF) – An accessory that “holds a stack of originals and feeds them automatically, one at a time to the exposure glass for scanning/copying.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> <li>• Automatic Exposure Selection (AES) – “The exposure is adjusted automatically when copying from originals with different background shadings.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> <li>• Automatic Magnification Selection (AMS) – “After detecting the correct size of each original document, the copier automatically calculates the correct magnification (zoom) ratio to fit the paper size selected by the operator.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> </ul>												

Acronym	Description
	<ul style="list-style-type: none"> <li>• Automatic Paper Selection (APS) – “A built-on sensor detects the size of the original and the copier selects the proper paper size.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> <li>• Automatic Tray Switching (ATS) – “A feature that enables a copier to automatically switch from a depleted paper source to another in the midst of a copy job, effectively increasing overall productivity.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> <li>• Automatic Start (AS) – “Copiers with this feature may be programmed for a job by the user before the copier is warmed up. Once programming is complete, the user presses the print (start) button and the machine automatically begins copying after warm-up temperature is attained.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide.</li> <li>• Base Cabinet – A base cabinet is utilized for a console device in order to utilize the device as a standalone unit (resting on the floor) instead of a paper-feed unit.</li> <li>• Paper-Feed Units – “Expands the paper capacity by providing two or more additional paper sources (cassettes, drawer or trays).” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide. Additionally, paper-feed units act as a support for base units to utilize the device as a standalone unit (resting on the floor) instead of a base cabinet. For Segments 2 (console), 3 and 4, the paper-feed units include a minimum of two (2) paper cassettes, drawers or trays.</li> <li>• Bypass Paper Supply – “A side opening tray into which copying materials” (Buyers Laboratory Inc., 2003 Multifunction Specification Guide) may be inserted for the use of copying onto. A bypass paper supply will be configured for multiple sheets of copying material.</li> <li>• Data Security Kit – The kits and software required to enable the encryption of all data written to the hard drive.</li> <li>• Finisher – An accessory “that delivers finished (stapled) sets into an offset catch tray(s).” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide. Additionally, finishers are subdivided into the following classifications:             <ul style="list-style-type: none"> <li>○ Advanced Finisher – A finisher that is free standing from the output device, offers at a minimum 50 page multi position stapling capacity and can be configured with any combination of three-hole punching and saddle stitch finishing (booklet making).</li> <li>○ Basic Office Finisher – A finisher that is free standing from the output device and offers at a minimum, 50 page stapling capacity.</li> <li>○ Internal/Wing Finisher – A finisher that either is internal to the device or is an attachment to the output side of the device and offers at a minimum, 25 page stapling capacity. Wing finishers are not free standing by original manufacturing design and rely on the output device for</li> </ul> </li> </ul>

Acronym	Description
	<p style="text-align: center;">support.</p> <ul style="list-style-type: none"> <li>• Network Connectivity Kit – All parts, boards and software (internal to the machine) to sufficiently enable the copier to network print, scan to network folder, scan to e-mail (including server based or POP3) and scan to desktop.</li> <li>• Network Security Kit – All necessary parts and software to enable encrypted communications between print drivers and a copier including any necessary specialized print drivers</li> <li>• Post Process Insertion Unit – An accessory that allows for the insertion of substrates without requiring the material to be fused.</li> <li>• Reversing Automatic Document Feeders (RADF) – A feeder that performs the same functions as an ADF with the added capability to automatically invert (turn) a two-sided original to copy material off of both sides.</li> <li>• Scan Speed – The speed a device scans originals through the document feeder at 600 x 600 DPI resolution or better.</li> </ul>
<b>Evaluation Committee</b>	An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to the RFP pursuant to NRS 333.335.
<b>Exception</b>	A formal objection taken to any statement/requirement identified within the RFP.
<b>Fair Market Value Lease</b>	The customer may purchase the device at the end of the term at the then Fair Market Value. All fair market value leases shall have an end of term buyout to own value that is determined by the then current market price. Such leases shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value must be disclosed to the Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.
<b>First Time Fix</b>	The measurement of a successful service and technical support call is defined by the dealer’s or manufacturer’s ability to remedy the underlying issue on the first service call. This measurement shall be that no other service calls are placed for the same issue within a 90 day period of time.
<b>Goods</b>	The term “goods” as used in this RFP has the meaning ascribed to it in NRS §104.2105(1) and includes, without limitation, “supplies”, “materials”, “equipment”, “devices”, and “commodities”, as those terms are used in NRS Chapter 333.
<b>Inside Delivery</b>	A predetermined inside location for installation of purchased, rented or leased devices.
<b>Intellectual Property</b>	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.
<b>Key Personnel</b>	Vendor staff responsible for oversight of work during the life of the project and for deliverables.
<b>LCB</b>	Legislative Counsel Bureau
<b>Lead State</b>	The State conducting this cooperative procurement, evaluation, award, and administering any resulting Master Agreements on behalf of the NASPO ValuePoint Cooperative Purchasing Program.
<b>Lease of Equipment</b>	<p>For financial accounting purposes, a lease for equipment in any resulting contract is one which:</p> <ul style="list-style-type: none"> <li>• Does not meet the criteria of a finance lease as defined by SSAP 21. Risk and</li> </ul>

Acronym	Description
	<p>rewards of ownership lie with the Awarded Vendor and/or;</p> <ul style="list-style-type: none"> <li>• The Customer cannot be liable for an residual risks associated with the assets and/or;</li> <li>• An operating lease is accounted for by the Customer without showing an asset (for the equipment) or a liability (for the lease payment obligations) on its balance sheet and/or;</li> <li>• Periodic payments are accounted for by the Customer as operating expenses for the period.</li> </ul>
<b>Lemon Clause</b>	Lemon laws are American state laws that provides a remedy for purchasers of consumer goods in order to compensate for products that repeatedly fail to meet standards of quality and performance. The rights afforded to consumers by lemon laws may exceed the warranties expressed in purchase contracts. Lemon law is the common nickname for these laws, but each state has different names for the laws and acts.
<b>LOI</b>	Letter of Intent - notification of the State’s intent to award a contract to a vendor, pending successful negotiations; all information remains confidential until the issuance of the formal notice of award.
<b>Manufacturer</b>	Defined as a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets multifunction devices. The manufacturer’s original OEM name shall appear on the device from the original point of manufacturer, even if labeled by a third party.
<b>Manufacturer Suggested Retail Price (MSRP)</b>	List price or recommended retail price of a product is the price which the manufacturer recommends that the retailer sell the product. MSRP is pricing provided to Buyers Laboratory Inc. (BLI) by manufactures.
<b>Master Agreement</b>	The underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor, as now or hereafter amended.
<b>May</b>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.
<b>Must</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b>NAC</b>	Nevada Administrative Code –All applicable NAC documentation may be reviewed via the internet at: <a href="http://www.leg.state.nv.us">www.leg.state.nv.us</a> .
<b>Newly Manufactured</b>	“Units that have not been previously used and are currently being marketed by the manufacturer.” – Buyers Laboratory Inc., 2003 Multifunction Specification Guide. New machines consist of all new or remanufactured parts with no used parts or components and the marking engine must be new and not used or remanufactured. New devices have never been under lease or placed as a demonstration or test machine, since original manufacture.
<b>NOA</b>	Notice of Award – formal notification of the State’s decision to award a contract, pending Board of Examiners’ approval of said contract, any non-confidential information becomes available upon written request.
<b>Non-Cancelable Rental</b>	The customer may not purchase the device at the end of the initial, or any subsequent renewal term. All non-cancelable rentals shall not have a buyout to own option and all Customers will be remitting payment for the usage of the device only. Such rentals shall be subject to monthly payment reduction by the Awarded Vendor upon renewal, based upon the depreciated value. The depreciated value shall never reach a value that would result in the transfer of the asset to the Customer. The depreciated value must be disclosed to the

Acronym	Description
	Customer at the time of the renewal; and the renewal rate is subject to the same terms and conditions under the contract with the Awarded Vendor.
<b>NRS</b>	Nevada Revised Statutes – All applicable NRS documentation may be reviewed via the internet at: <a href="http://www.leg.state.nv.us">www.leg.state.nv.us</a> .
<b>Operational Lease</b>	Operational lease is used to acquire devices on a relatively short term basis with no benefit of ownership to the lessee; no buy-out will be considered.
<b>Order or Purchase Order</b>	Any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
<b>Pacific Time (PT)</b>	Unless otherwise stated, all references to time in this RFP and any subsequent contract are understood to be Pacific Time.
<b>Participating Addendum(PA)</b>	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.
<b>Participating Entity</b>	A state, or other legal entity, properly authorized to enter into a Participating Addendum.
<b>Participating State</b>	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. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.
<b>Participating State Contract Administrator</b>	Each state shall assign a Contract Administrator all state acquisitions and shall define the Contract Administrator for political subdivision acquisitions if different from the Contract Administrator.
<b>Product</b>	Any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to the Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.
<b>Power Protection</b>	<p>A device that provides the following protection for power irregularities for smaller voltage machines (up to 15 amps):</p> <ul style="list-style-type: none"> <li>• Fax/Modem Protection:           <ul style="list-style-type: none"> <li>○ In/Out RJ11 modem jacks</li> <li>○ FCC Registration numbers must be marked on each unit</li> <li>○ Must contain automatic re-settable fuse in protection circuit</li> <li>○ Must incorporate a wideband DSL filter</li> </ul> </li> <li>• Network Protection:           <ul style="list-style-type: none"> <li>○ In/Out RJ45 modular jacks</li> <li>○ ETL Verified to TIA/EIA-568-B.2 Cat5e standard</li> </ul> </li> <li>• Frequency Attenuation:           <ul style="list-style-type: none"> <li>○ Normal Mode: 30 dB min, 45 kHz – 23 MHz</li> <li>○ Common Mode: 30 dB min, 20kHz – 30 MHz</li> </ul> </li> <li>• Remnant voltage, IEEE C62.41 Cat. B Impulse, neutral-ground: 50 Volt peak max.</li> <li>• UL Suppressed Voltage Rating of 330 volts on all modes.</li> <li>• Unit must operate in continuous mode – no over voltage shut off disconnect.</li> <li>• Unit must not provide power if wall outlet is reversed wired, not properly grounded or missing.</li> <li>• Minimum of 3 AC receptacles, including 1 flexible (“pigtail”) outlet.</li> </ul>

Acronym	Description
	<ul style="list-style-type: none"> <li>• UL Listed and marked on each product.</li> </ul>
<b>Proposal</b>	The official written response submitted by a Vendor in response to this RFP.
<b>Proprietary Information</b>	Any trade secret or confidential business information that is contained in a bid or proposal submitted on a particular contract. (Refer to NRS 333.020 (5) (a)).
<b>Public Record</b>	All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. (Refer to NRS 333.333 and NRS 600A.030 [5]).
<b>Purchasing Entity</b>	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.
<b>Redacted</b>	The process of removing confidential or proprietary information from a document prior to release of information to others.
<b>Refurbished</b>	A product which received major maintenance (and/or minor repair) including the replacement of all normal parts subject to wear during the normal course of use.
<b>Remanufactured</b>	<p>The process of disassembling products known to be worn or defective that can be reused or brought up to OEM specification by: cleaning, repairing or replacing in a manufacturing environment and; then reassembled to sound working condition, and tested. The remanufactured product is ready for a second life, performing as new. A product is considered remanufactured if:</p> <ul style="list-style-type: none"> <li>• Its primary components come from a used product.</li> <li>• The used product is dismantled to the extent necessary to determine the condition of its components.</li> <li>• The used product's components are thoroughly cleaned and made free from rust and corrosion.</li> <li>• All missing, defective, broken or substantially worn parts are either restored to sound, functionally good condition, or they are replaced with new or remanufactured parts.</li> <li>• The product is in sound working condition from machining, rewinding, refinishing or other operations that are performed as necessary.</li> <li>• The product is reassembled, tested, and a determination is made that it will operate like a new product.</li> </ul>
<b>Response Time</b>	This time starts with the original service call into the dealer or manufacturer and ends once all repairs, part installations, equipment modifications and equipment configuration changes have been completed and the equipment functions in accordance with manufacturer published specifications.
<b>RFP</b>	Request for Proposal - a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection as defined in NRS 333.020(8); including all parts, sections, exhibits, attachments and amendments.
<b>Service Base Location</b>	The place of business where, as a regular course of business, the manufacturer or dealer provides the warehousing of parts and training for service technicians.
<b>Service Call</b>	An on-site technician visit due to machine error or breakdown requiring the on-site services of an authorized service technician to remedy the error.

Acronym	Description								
<b>Service Response Time</b>	The time required to solve a service call beginning from the time the call is logged with the Awarded Vendor until either an Authorized Service Technician arrives on-site or the issue is resolved through the Awarded Vendor’s phone support.								
<b>Service Zone</b>	<p>The following table provides the definitions for three separate Service Zones based on the distance from the Awarded Vendor’s closest Service Base Location:</p> <table border="1" data-bbox="545 443 1451 770"> <thead> <tr> <th data-bbox="545 443 889 474">Service Zone</th> <th data-bbox="889 443 1451 474">Definition</th> </tr> </thead> <tbody> <tr> <td data-bbox="545 474 889 604">Urban</td> <td data-bbox="889 474 1451 604">Within a 60 mile radius of closest Service Base Location, within 60 miles of the State Capital or within 60 mile radius of a Metropolitan Statistical Area.</td> </tr> <tr> <td data-bbox="545 604 889 705">Rural</td> <td data-bbox="889 604 1451 705">Outside a 60 mile radius from closest Service Base Location, the State Capital or a Metropolitan Statistical Areas.</td> </tr> <tr> <td data-bbox="545 705 889 770">Remote</td> <td data-bbox="889 705 1451 770">Areas inaccessible via road from any Urban or Rural Service Zone regardless of distance.</td> </tr> </tbody> </table>	Service Zone	Definition	Urban	Within a 60 mile radius of closest Service Base Location, within 60 miles of the State Capital or within 60 mile radius of a Metropolitan Statistical Area.	Rural	Outside a 60 mile radius from closest Service Base Location, the State Capital or a Metropolitan Statistical Areas.	Remote	Areas inaccessible via road from any Urban or Rural Service Zone regardless of distance.
Service Zone	Definition								
Urban	Within a 60 mile radius of closest Service Base Location, within 60 miles of the State Capital or within 60 mile radius of a Metropolitan Statistical Area.								
Rural	Outside a 60 mile radius from closest Service Base Location, the State Capital or a Metropolitan Statistical Areas.								
Remote	Areas inaccessible via road from any Urban or Rural Service Zone regardless of distance.								
<b>Shall</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.								
<b>Short Term Rental</b>	<p>A Short Term Rental shall:</p> <p>Meet the financial requirements of an Operational Lease but shall be cancelable given 30 days written notice to the Awarded Vendor at any point during the rental term.</p> <p>Not exceed a total term of 18 months for Used or Refurbished devices.</p>								
<b>Should</b>	Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.								
<b>SSAP 21</b>	The Statements of Statutory Accounting Principles (SSAP) are a set of accounting regulations prescribed by the National Association of Insurance Commissioners for the preparation of an insuring firm’s financial statements.								
<b>State</b>	The State of Nevada and any agency identified herein; and any other state who has executed a Participating Addendum to any subsequent contract resulting from this RFP.								
<b>Subcontractor</b>	Third party, not directly employed by the contractor, who will provide services identified in this RFP. This does not include third parties who provide support or incidental services to the contractor.								
<b>Trade Secret</b>	Information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.								
<b>Type of Devices</b>	<p>The following definitions of the types of copiers and printing devices will prevail:</p> <p>A) Copiers Black &amp; White – A machine that makes exact paper copies of printed or graphic materials in black and white only.</p> <p>B) Copiers Color – A machine that makes exact paper copies of printed or graphic materials in black and white and more than one color.</p> <p>C) Wide Format Devices – A printer that prints larger than 11x17 paper, which typically use ink jet technology to print on a variety of output mediums.</p>								

Acronym	Description
	<p>D) Printers (Color and Black &amp; White) – Device does not copy as the primary function and does not allow 11x17 paper. Printer shall include an inkjet or laser-printer print engine. Printer equipment may include the function of network printing as the primary function and the functionalities of copying/scanning/faxing (or e-fax) as a convenience.</p> <p>E) Digital Duplicator – High production device with a stencil ink and a drum. Devices making use of templates to create large volume of documents quickly at the lowest cost per copy.</p> <p>F) Scanners – A device used to convert paper documents into digital images.</p>
<b>Useful Life</b>	Period during which an asset or property is expected to be usable for the purpose it was acquired.
<b>User</b>	State governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.
<b>Vendor</b>	Organization/individual submitting a proposal in response to this RFP.
<b>Will</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b>Working Days</b>	Monday through Friday, not including State Observed Holidays, defined in Section 2.3.



## NASPO ValuePoint Master Agreement Terms and Conditions

The NASPO ValuePoint Master Agreement uses the default order of precedence specified in section 1 to resolve conflicts between terms and conditions.

Depending on the solicitation design, the order of precedence may have to be revised by the Lead State. Order of precedence clauses cover conflicts in language, not additional language. Courts will harmonize terms wherever possible, and additional language typically will be given effect unless it overtly conflicts other language. So, for example, a contractor's warranty provisions would apply to an RFP silent on warranty requirements. However, some clarification might be required if the RFP specifies a warranty term and the contractor's warranty term is more favorable than the warranty in the RFP.



## **Attachment A**

# **NASPO ValuePoint Master Agreement Terms and Conditions**

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

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

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Statement of Work;
- (5) The Solicitation; and
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

### **2. Definitions**

**Acceptance** means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

**Acceptance Testing** means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

**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 of 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 and the District of Columbia. 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 later participate in the Master Agreement

**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, 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.

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

The Master Agreement term may be no more than 5 years unless approved by the Management Board. The Lead State will specify the Master Agreement term as approved by the Management Board.

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

### **4. Amendments**

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

### **5. 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.

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

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least (Enter the Number of Days) days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

### **7. Cancellation**

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

### **8. 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.

### **9. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. 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.

### **10. 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.

### **11. 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 Buyer 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 Offeror. If damage does occur, it is the responsibility of the Offeror 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 Ordering Entity's Purchase Order number.

### **12. Changes in Contractor Representation**

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

### **13. Force Majeure**

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

### **14. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### **15. 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.

### **16. 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.

### **17. Insurance**

This section is an insurance provision applicable to any Orders. The sourcing team should verify that these coverage limits are appropriate. If based on the nature of the commodity different insurance is required that is applicable to the entire Master Agreement (where not modified in a Participating Addendum), those modifications should be included in this subsection.

If the Lead State or other Participating Entities want different insurance applicable to their Orders, those provisions should be in the Participating State's terms and conditions attached to the RFP or in a Participating Addendum.

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 Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, 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, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at 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.

### **18. Laws and Regulations**

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

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

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, 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 license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

### **20. 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 State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating 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.

## **21. Ordering**

Some NASPO ValuePoint cooperative procurements lend themselves to task order competitions within the awarded contractor pool. The following language sets out the general requirements for ordering and a process for permitting Purchasing Entities to seek reduced pricing based on aggregation of requirements or other conditions that might prompt price reductions.

- 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. The resulting Master Agreements permit Purchasing Entities to 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 compliance with 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 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 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.

## **22. Participants**

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

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

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

d. NASPO ValuePointCooperative 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 ValuePoint 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. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor

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.

## **23. Payment**

Payment for completion of a contract order 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. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **24. Public Information**

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

## **25. Records Administration and Audit**

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

## **26. Administrative Fees**

Confirm the administrative fee associated with the contract. The template language includes the default fee of .25%. Revise the default fee as authorized by the Management Board.

Under the MOA, the NASPO ValuePoint administrative fee is described in the original Intent to Participate package approved by the Management Board and submitted to the States.

- 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 26a 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.

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

Sourcing team will need to discuss what data elements will be required in the detailed sales reporting in relation to the elements to the standard NASPO ValuePoint reporting template. Data columns should not be removed, but they can be hidden. Some data elements may not be available and will require interaction with the suppliers on creating the final reporting template for the detailed reports. Sourcing team will also need to discuss if any other reporting is needed and how data should be transmitted to Lead State and NASPO ValuePoint.

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 in shown in Section \_\_ Attachment \_\_\_\_.

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.

## ***28. Standard of Performance and Acceptance***

Any standard of performance under this Master Agreement applies to all 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 the solicitation 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 accepted and no charges shall be paid until the standard of performance is met. The warranty period will begin upon Acceptance.

### **29. Warranty**

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

### **30. System Failure or Damage**

In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

### **31. 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.

### **32. 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.

### **33. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating 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 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 to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

### **34. Debarment**

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

### **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 (in most cases also the 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; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

### **36. NASPO ValuePoint eMarket Center**

Sourcing team will need to decide if the eMarket center will work for the type of service being solicited for and choose the appropriate language.

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.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. 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.

OR

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 Contractor shall either upload a hosted catalog into the eMarket Center or integrate a punchout site with the eMarket Center.

b. Supplier'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.

The NASPO ValuePoint Contract Administrator/Sourcing Team will decide how often the contractor should or is allowed to update products and pricing in the eMC. Insert the update timeframes in the bracketed portion of subsection 2b of the clause.

(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.

The Lead State Contract Administrator and Sourcing Team will decide how often the contractor should validate that their punchout is accurate with products and pricing. Include those instructions in the bracketed portion of subsection 2b of the clause.

d. Revising Pricing and Product Offerings: Any revisions (whether an increase or decrease) to pricing or product/service offerings (new products, altered SKUs, 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 quarter]. The following conditions apply with respect to hosted catalogs:

The frequency in the bracketed phrase should be consistent with the timeframe specified in subsection 2a.

(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).

The Lead State Contract Administrator and Sourcing Team will decide the timeframe for updated pricing to go into effect. One month probably is too long for new products and/or pricing to go into effect.

(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 suppliers 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 supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers 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 suppliers 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 supplier'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 supplier agrees to take commercially reasonable efforts to enable such separate SciQuest catalogs.

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

This clause is used whenever the Lead State and sourcing team conclude that



federal funds may be used to pay for Orders under the master agreement. The clause informs contractors that Participating or Purchasing Entities may be required to add federal contract terms and conditions.

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.

**(June 2015)**