Washington State Department of
Enterprise Services

PARTICIPATING ADDENDUM
NASPO VALUEPOINT

AUTOMOTIVE PARTS

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

MASTER AGREEMENT

Master Agreement No: 7-21-99-41-01

Elliot Auto Supply Co. Inc. dba Factory Motor Parts
(hereinafter "Contractor")

and

State of Washington
(hereinafter "Participating State")

WASHINGTON MASTER CONTRACT NO.: 12621

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Elliot Auto Supply Co. Inc. dba Factory Motor Parts a Minneapolis Company. ("Contractor") and is dated and effective as of January 01, 2022.

RECITALS

A. Pursuant to Legislative authorization codified in RCW 39.26.060, Enterprise Services, on behalf of the State of Washington, is authorized to participate in cooperative purchasing agreements to develop master agreements to procure goods and/or services and to make such competitively solicited and awarded contracts available to Washington state agencies and designated eligible purchasers consistent with terms and conditions set forth by Enterprise Services.

B. Enterprise Services timely provided public notice of the competitive solicitation process conducted by the above-referenced lead state through Washington's Electronic Business Solutions (WEBS) system.

C. The above-referenced Lead State, as part of its competitive solicitation process, evaluated all responses to its procurement and identified Contractor as an apparent successful bidder and awarded a Master Agreement to Contractor.

D. Enterprise Services has determined that participating in this Master Agreement is in the best interest of the State of Washington.

E. The purpose of this Participating Addendum is to enable eligible purchasers, as defined herein, to utilize the Master Agreement as conditioned by this Participating Addendum.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **SCOPE:** This Participating Addendum covers the competitive procurement for Automotive Parts led by the State of California for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.

2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities" or "Purchasers"):

   (a) WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.

   (b) WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following specific institutions of higher education in Washington:

   - State universities – i.e., University of Washington & Washington State University;
   - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
   - Evergreen State College;
   - Community colleges; and
   - Technical colleges.

   (c) MCUA PARTIES. The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:

- Political subdivisions (e.g., counties, cities, school districts, public utility districts, ports) in the State of Washington;
- Federal governmental agencies or entities;
- Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
- Federally-recognized Indian Tribes located in the State of Washington.

By placing an order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Master Agreement. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

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

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

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

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

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

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

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30

June 30	July 31
September 30	October 31
December 31	January 31

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

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

Amount owed to Enterprise Services = Total contract sales invoiced (not including sales tax) x .0150.

(b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

(c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:

- This Washington Master Contract No.: 12621
- The NASPO Master Agreement No.: 7-21-99-41-01
- The year and quarter for which the VMF is being remitted, and
- Contractor's name as set forth in this Contract, if not already included on the face of the check.

(d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.

(e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.

(f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. **CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

(a) WAGE VIOLATIONS. Contractor represents and warrants that, during the term of this Master Contract and the three (3) year

period immediately preceding the award of the Master Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.

(b) CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Master Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

3.6. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION**: Contractor shall comply with all applicable law. Prior to making any sales hereunder, if Contractor is not already registered, Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to Purchasers in the State of Washington, if Contractor does not currently do so, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

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

Contractor	**Participating State**
Elliot Auto Supply Co. Inc. Dba Factory Motor Parts 1600 E Orangethorpe Ave, Fullerton, CA 92831	State of Washington Department of Enterprise Services Contracts & Procurement Division P.O. Box 41411 Olympia, WA 98504-1411
Attn: Dana Carney Tel: (720) 251-1776 Email: d.carney@fmpco.com	Attn: Gideon Simukonda Office: (360) 407-9296| Mobile: (360) 280-7261 Email: Gideon.Simukonda@des.wa.gov Team: DESContractsTeamMapple@des.wa.gov

5. **SUBCONTRACTORS:** Except for subcontracts with Contractor's designated resellers/distributors/fulfillment partners ("Designated Subcontractors"), Contractor shall not subcontract, assign, or otherwise transfer its obligations under the Master Agreement and this Participating Addendum without Enterprise Services' prior written consent. Violation of this condition shall constitute a material breach establishing grounds for termination of this Participating Addendum.

   (a) SUBCONTRACTOR AUTHORIZATION. Contractor is authorized, without additional Participating State consent, to utilize its Designated Subcontractors to provide sales and service support to Purchasers hereunder; provided, however, that such participation shall be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum. Contractor shall maintain a list of such Designated Subcontractors utilized for this Participating Addendum, and, upon request, promptly provide Enterprise Services with such list and any updates.

   (b) CONTRACTOR RESPONSIBILITY FOR SUBCONTRACTORS. Contractor shall be responsible to ensure that all requirements of the Master Agreement (including, but not limited to, insurance requirements, indemnification, Washington state business registration, etc.) flow down to any and all Designated Subcontractors. In no event shall the existence of a subcontract between Contractor and its subcontractor operate to release or reduce Contractor's liability to the Participating State or any Purchaser for any breach of the Master Agreement or this Participating Addendum. As to Participating State and Purchasers hereunder, Contractor shall have full and complete responsibility and liability for any act or omission by Contractor's Designated Subcontractors.

   (c) PURCHASER PAYMENT REGARDING CONTRACTOR'S DESIGNATED SUBCONTRACTORS. Notwithstanding any provision to the contrary, the parties understand and agree that for any contract sales or service provided pursuant to the Master Agreement and this

Participating Addendum, Purchaser payment shall be made directly to Contractor as the awarded vendor pursuant to the competitive procurement; provided, however, that, in the event any such sales or services are performed by a Designated Subcontractor for Contractor, Contractor may instruct such Purchaser to make payment for such sales or services to Contractor's identified Designated Subcontractor. Regardless of whether Contractor instructs a Purchaser to make such payment to Contractor's Designated Subcontractor, Contractor shall remain responsible for performance.

(d) CONTRACT SALES REPORTING. Notwithstanding any provision to the contrary, Contractor shall report to Enterprise Services total contract sales, delineated by purchaser, made by each individual Designated Subcontractor and also report total contract sales, delineated by purchaser, on a consolidated Contractor 'roll-up' basis. Contractor shall maintain records supporting such reports in accordance with the Master Agreement's records retention requirements.

6. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

7. **GENERAL:**

(a) INTEGRATED AGREEMENT; MODIFICATION. This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.

(b) AUTHORITY. Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

(c) ELECTRONIC SIGNATURES. A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.

(d) COUNTERPARTS. This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: Elena McGrew

Its: Acting Enterprise Procurement Manager

ELLIOT AUTO SUPPLY CO. INC A MINNEAPOLIS COMPANY.
DBA FACTORY MOTOR PARTS

By: Dana Carney

Its: Fleet Manager

SCO ID: 7760-721994101

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
7-21-99-41-01	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

2. The term of this Agreement is:

START DATE
October 20, 2021, or upon DGS approval of contract, whichever is later.

THROUGH END DATE
October 19, 2024 with the option to extend one (1) additional two (2) year period

3. The maximum amount of this Agreement is:
$0.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits		Title	Pages
	Exhibit A	Scope of Work	15
	Exhibit B	Category Discounts	1
	Exhibit C	Lead State General Provisions	1
+ -	Exhibit D	NASPO ValuePoint Master Agreement Terms	22

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at https://www.dgs.ca.gov/OLS/Resources

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
1600 E Orangthorpe	Fullerton	CA	92831

PRINTED NAME OF PERSON SIGNING	TITLE
Dana Carney	Fleet Sales and Operations Manager

CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
Dana Carney Digitally signed by Dana Carney DN: cn=Dana Carney, o=Factory Motor Parts, ou=Fleet Sales, email=d.carney@fmpco.com, c=US Date: 2021.10.20 10:49:53 -07'00'	10-20-2021

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 3rd Street	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Stephanne Lim	MAU2 Supervisor

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
stephanne lim Digitally signed by stephanne lim Date: 2021.10.20 13:06:35 -07'00'	10/20/2021

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Elliott Auto Supply Co., Inc. dba Factory Motor Parts hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Final_regulation_language_10032016.pdf).

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	62%
2	Alternators and Starters	64%
3	Batteries	64%
4	Bearings, Ball and Roller	67%
5	Belts and Hoses	60%
6	Brakes	68%
7	Electrical and Ignition	62%
8	Emission, Sensors and Exhaust	62%
9	Engine and Drive Train	62%
10	Filters, Oil, Gas, Air and Transmission	71%
11	Gaskets and Seals	65%
12	Heating and Cooling (Engine)	62%
13	Lamps, Lighting and Mirrors	62%
14	Oils, Chemicals, Fluids and Lubricants	62%
15	Pumps, Fuel and Water	65%
16	Suspension, Shocks, Struts and Steering	65%
17	Wipers/Washers	77%
18	Winter Accessories	60%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	62%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	30%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/8/2010) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Model-Contract-Language

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

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

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

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

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

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

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

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

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

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

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

3.3 Participating Addenda. Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

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

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

4.3 Authorized Use. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and 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.

4.4 Obligated Entities. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 Notice of Participating Addendum. Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

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

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

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

5.2 Administrative Fees

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

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must 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 following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. 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 ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use 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.

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

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will 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.

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

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

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

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

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

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

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

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

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

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

7.5 **Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

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

7.6.1 The services or supplies being delivered;

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

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

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

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

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

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

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

VIII. Shipping and Delivery

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

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

8.2 **Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

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

8.4 **Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

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

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

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

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

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

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

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

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

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

X. Warranty

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

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

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

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

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

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

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

XII. Indemnification

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

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

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

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

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

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

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

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

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

XIII. Insurance

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

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

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

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

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

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

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

13.5 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

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

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

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

XIV. General Provisions

14.1 Records Administration and Audit

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

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

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

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

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

14.3 Assignment/Subcontracts

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

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

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

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

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

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

14.8 Defaults and Remedies

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

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

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

14.8.3 If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
14.8.3.1 Any remedy provided by law;
14.8.3.2 Termination of this Master Agreement and any related Contracts or portions thereof;
14.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;
14.8.3.4 Suspension of Contractor from being able to respond to future bid solicitations;
14.8.3.5 Suspension of Contractor's performance; and
14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

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

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

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

14.11 No Waiver of Sovereign Immunity

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

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

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

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

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

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

State of Washington Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	**CONTRACT AMENDMENT**	
	Contract No.:	12621
Elliott Auto Supply Co. Inc. dba Factory Motor Parts 1600 E. Orangethorpe Ave. Fullerton, CA 92831	Amendment No.:	1
	Effective Date:	October 19, 2024

FIRST AMENDMENT

TO

WASHINGTON PARTICIPATING ADDENDUM NO. 12621

AUTOMOTIVE PARTS

MASTER AGREEMENT NO. 7-21-99-41-01 ADMINISTERED BY THE STATE OF CALIFORNIA

This First Amendment ("Amendment") to Washington State Participating Addendum No. 12621 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Elliott Auto Supply Co. Inc. dba Factory Motor Parts, a Minnesota Corporation ("Contractor") and is dated as of October 19, 2024.

RECITALS

A. Enterprise Services and Contractor (collectively the "Parties") entered into that certain Contract No. 12621 dated effective as of January 1, 2022 ("Contract").

B. The Parties now desire to extend the Term of this Contract for an additional twenty-four (24) months to October 19, 2026.

C. The Partied further desire to amend the Contract to include a 'pay equality provision' as required by the Washington State Legislature. *See* LAWS OF 2023, ch. 475, § 919(4).

D. The Parties additionally desire to amend the Contract to include a 'nondiscrimination provision' as required by the Washington State Legislature. *See* LAWS OF 2023, ch. 468 [codified at RCW 39.26.245(3) and RCW 49.60.530].

E. The amendment set forth herein is within the scope of the Contract.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract as follows:

1. TERM. The Term of this Contract is amended to add twenty-four (24) months and thereby changing the end date of the Contract from October 19, 2024 to October 19, 2026.

2. PAY EQUALITY. The following provision is added to the end of section 3.5 (Contractor Representations and Warranties) as a new subsection:

3.5 (d) WASHINGTON STATE PAY EQUALITY FOR 'SIMILARLY EMPLOYED' INDIVIDUALS. Contractor represents and warrants that, among Contractor's employees, 'similarly employed' individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for Contractor's workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but is not limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Contract.

3. NONDISCRIMINATION. The following provision is added to the end of section 7 (General) as a new subsection:

7(e) NONDISCRIMINATION.

(a) Nondiscrimination Requirement. During the term of this Contract, beginning as of the effective date of this Amendment, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

(b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

(c) Default. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged

discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

(d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

4. NO CHANGE OTHER THAN AMENDMENT. Except as amended herein, the Contract is unaffected and remains in full force and effect.

5. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.

6. AUTHORITY. Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

7. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.

8. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different

times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

EXECUTED AND EFFECTIVE as of the day and date first above written.

ELLIOTT AUTO SUPPLY CO. INC. DBA FACTORY MOTOR PARTS, A MINNESOTA CORPORATION	**STATE OF WASHINGTON DEPARTMENT OF ENTERPRISE SERVICES**
By: Dana Carney Dana Carney (Oct 23, 2024 17:58 CDT)	By: Michellee M. Jemmott
Name: Dana Carney	Name: Michellee Jemmott
Title: Fleet Manager	Title: Procurement Supervisor
Date: Oct 23, 2024	Date: Oct 23, 2024

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

SCO ID: 7760-721994101-A1

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 40 PAGES

AGREEMENT NUMBER	AMENDMENT NUMBER	Purchasing Authority Number
7-21-99-41-01	1	

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME
Department of General Services

CONTRACTOR NAME
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

2. The term of this Agreement is:

START DATE
October 20, 2021

THROUGH END DATE
October 19, 2026

3. The maximum amount of this Agreement after this Amendment is:
$0.00

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

A. Agreement end date is extended from October 19, 2024, to October 19, 2026.

B. Exhibit A - Scope of Work is revised to update website link in Section 4.K.7 (Brake Friction Material) and add Section 4.L (Generative Artificial Intelligence (GenAI) Reporting). Exhibits A - D are hereby replaced with attached Exhibit A - D (40 pages).

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)
Elliott Auto Supply Co., Inc. dba Factory Motor Parts

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
1600 E Orangthrope	Fullerton	CA	92831

PRINTED NAME OF PERSON SIGNING	TITLE
Dana Carney	Sr. Fleet Manager
CONTRACTOR AUTHORIZED SIGNATURE	**DATE SIGNED**
Dana Carney	8/27/2024

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME
Department of General Services, Procurement Division

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
707 Third Street, 2nd Floor	West Sacramento	CA	95605

PRINTED NAME OF PERSON SIGNING	TITLE
Julie Matthews	MAU2 Supervisor
CONTRACTING AGENCY AUTHORIZED SIGNATURE	**DATE SIGNED**
Julie Matthews Digitally signed by Julie Matthews Date: 2024.09.06 14:00:31 -07'00'	9/6/2024
CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	**EXEMPTION (If Applicable)**

EXHIBIT A: SCOPE OF WORK

1. AGREEMENT OVERVIEW

This Scope of Work reflects the products and supplies to be provided by Elliott Auto Supply Co., Inc. dba Factory Motor Parts hereinafter referred to as the "Contractor," for the State of California hereinafter referred to as the "Lead State" and all other Participating States and Entities, for the Automotive Parts Master Agreement ("Agreement" or "Master Agreement").

Contractor shall permit State of California agencies, California local governmental agencies and NASPO ValuePoint Participating States and Entities to participate under this Master Agreement. Subject to the approval of the Contractor, any Canadian provincial government or provincially funded entity in Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, Northwest Territories, Nunavut, Yukon, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

Contractor will provide the entire portfolio of quality Automotive Parts to the Lead State, Participating States and Entities and local governmental agencies in a timely and efficient manner. Contractor will be the primary point of contact for data collection, reporting, and distribution of Automotive Parts to the Lead State and all other Participating States and Entities.

2. AGREEMENT TERM

The term of this Agreement is for a three (3) year period from the date of Master Agreement execution with the option to extend one (1) additional two (2) year period at the discretion of the Lead State. Extensions will be made by amendment to the Agreement at the same contracted discounts, terms and conditions.

3. RESPONSIBILITIES

A. Contractor shall meet all requirements identified in this Agreement.
B. Contractor will provide a Contract Manager in accordance with Exhibit A, Section 6.I.3 that will work with the Lead State Contract Administrator to fully implement and manage the Agreement.
C. Contractor will work closely with subcontractors (if applicable) to fully implement and manage this Agreement in accordance with Exhibit A, Section 6.I.1.
D. Contractor shall make available to the Lead State, technically competent personnel to accomplish the tasks and deliverables for the implementation and management of the Agreement.

E. Contractor shall promptly notify the Lead State Contract Administrator in writing of any unresolved issues or problems related to the Agreement that have been outstanding for more than five (5) business days.

4. REQUIREMENTS

A. Available Product Categories

Contractor shall provide products for Automotive Parts categories at the discount provided in Exhibit B, Category Discounts. Products outside the scope of categories listed in Exhibit B may not be purchased from the Master Agreement.

B. Electronic Catalog

Item	Description
1.	**Automotive Parts Electronic Catalog** Contractor shall develop and maintain an electronic catalog for use by Purchasing Entities. Contractor's electronic catalog must be separate from the Contractor's commercially available (i.e., public) online catalog and shall contain only category items and pricing as specified in the awarded Master Agreement. No other items or pricing may be shown in the electronic catalog without written approval from the Lead State Contract Administrator.
2.	**Electronic Catalog/Contract Website Contents** The Lead State Contract Administrator will review and determine acceptability of the electronic catalog format and data. The Electronic Catalog shall contain the following data elements at minimum: • Item descriptions • Contractor's stock keeping number (SKU) • Unit of measure (UOM) • Quantity in the UOM • List Price/MSRP • Master Agreement price • Quote generation (if applicable) • Publicly available OEM price lists (current and archives) Within 30 calendar days of notice of award, Contractor will be required to provide the Electronic Catalog for Lead State Contract Administrator approval.
3.	**Availability** The Electronic Catalog shall be available twenty-four (24) hours per day, seven (7) days per week, except for regularly scheduled maintenance

Item	Description
	times. Contractor shall not have any catalog viewing access restrictions for Participating States or Entities.

C. Pricing

Item	Description
1.	**Category Discounts** Master Agreement employs a discount-off Manufacturer Suggested Retail Price (MSRP) structure. Category discounts outlined in Exhibit B, Category Discounts, will remain firm for the entire term of the agreement, including extension periods. However, Contractors may offer lower pricing on a per order basis to Purchasing Entities. In the event a product falls into two or more categories the highest category discount will be applied.
2.	**Promotions** Contractor may offer promotional discounts, including but not limited to statewide promotional discounts, customer location specific discounts, bulk discounts, or spot discounts. During special pricing promotions, the Contractor shall offer Participating Entities the promotional pricing or the category discount percentage off MSRP, whichever is lower. Promotional pricing shall not be cause for a permanent change in pricing. Promotional items shall come with all benefits of the Master Agreement terms and conditions and shall include all provisions such as warranty and delivery.

D. Retail Sales Establishments

Item	Description
1.	**Retail Sales Establishments** Retail Sales Establishments are defined as any facilities that the Contractor uses on a regular basis to warehouse and/or sell merchandise, and at which the Contractor conducts regular business transactions at either the retail or wholesale level. Contractor facility should provide: • Walk-in and will-call order system during regular work hours. • Customer service associate to support walk-in and will-call order system. • Itemized sales receipts for all walk-in and will-call transactions.

Item	Description
	• Availability of delivery. • Acceptance of Purchasing Card. These facilities shall be operated in accordance with state law and comply with all zoning requirements as implemented by local, county or state governments. Examples of unacceptable retail sales establishments include houses, garages, or storage rental facilities. Contractor shall provide a list of authorized retail sales establishment locations to be used on this Master Agreement to the Lead State within 15 calendar days of notice of award. If Contractor is offering Retail Sales Establishments, Contractor shall ensure state agencies, local government agencies and other Participating Entities will receive Master Agreement pricing when purchasing items through Retail Sales Establishments.

E. Ordering

Item	Description
1.	**Ordering Methods** Contractor shall accept orders through the following methods: • **Electronic (email)** – An email address to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. • **Facsimile** – A toll-free facsimile number to be used by Purchasing Entities for placing orders must be in place before the commencement of this Master Agreement. Facsimile orders must be accepted between the hours of 8:00 AM and 5:00 PM, Monday through Friday in the time zone the order is placed. • **U.S. Mail** – Contractor must have the capability to receive orders by mail in place before the commencement of this Master Agreement. • **Over-the-counter/Walk-In** – Contractor shall provide over-the-counter order and delivery at all commercial locations. See Exhibit A, Section 6.D (Retail Sales Establishments). • **Online (internet)** – Contractor's Electronic Catalog website to be used by Purchasing Entities for placing orders must be in

Item	Description
	place before the commencement of this Master Agreement. See Exhibit A, Section 6.B (Electronic Catalog). Prior to contract award, Contractor shall provide the ordering information within five (5) business days of the Lead State's request.
2.	**Purchase Execution** California state agencies must submit orders on a Purchasing Authority Purchase Order (Std. 65) or using the FI$Cal Purchase Order process in accordance with posted User Instructions. Local government agencies and other Purchasing Entities may use their own approved Purchase Order document process as addressed in their Participating Addendum. Contractor shall not accept purchase documents from Purchasing Entities that are incomplete or contain items outside the scope of the Master Agreement.
3.	**Minimum Order (M)** There is no minimum order.
4.	**Order Acknowledgement** The Contractor must provide Purchasing Entities with an order receipt acknowledgment via e-mail/facsimile within one (1) business day after receipt of an order. The acknowledgement will include: • Purchasing Entity Name • Purchase Order Number • Description of Goods / SKUs • Total Cost • Anticipated Delivery Date • Identification of any Out of Stock/Discontinued Items
5.	**Out-of-Stock Remedy** Upon receipt of order acknowledgment identifying out of stock items, the Purchasing Entity shall have the following options: • Request back order • Cancel the item from the order Upon request, Contractor shall provide updates on back ordered items to the Purchasing Entity. Contractor is not permitted to make

Item	Description
	substitutions or cancellations without authorization from the Purchasing Entity.
6.	**Core Exchange/Charges** All parts supplied which require core exchange shall be monitored by the Contractor to ensure proper cores are returned. Core credit is to be issued the same day as received. Any core that is not usable or not returned shall be billed at the core price listed in the manufacturer's price sheet for that particular part.
7.	**Remanufactured Parts** Contractor may provide remanufactured parts when new parts are not available with authorization from the Purchasing Entity. Used, previously installed or shop-worn parts shall not be accepted.

F. Delivery

Item	Description
1.	**Delivery Locations** Deliveries are to be made to the Purchasing Entities' location specified on the individual order, which may include, but not be limited to inside buildings, high-rise office buildings, and receiving docks.
2.	**Delivery Schedule** Delivery of ordered product shall be completed within two (2) business days after receipt of an order, unless otherwise agreed to by the Purchasing Entity. Since receiving hours for each Purchasing Entity will vary by facility, it will be the Contractor's responsibility to check with each facility for their specific receiving hours before delivery occurs. Contractor must notify the Purchasing Entity within 12 hours of scheduled delivery time, if delivery cannot be made within the time frame specified on the order.
3.	**Delivery from Retail Sales Establishments** Delivery of standard in-stock items to locations within five (5) miles from company's retail business establishment shall be accomplished within 45 minutes. Delivery outside the five (5) mile range will be accomplished by a scheduled delivery.

Item	Description
4.	**Security Requirements for Institutions** Deliveries may be made to locations inside secure institutional grounds (such as state prisons) that require prior clearances to be made for delivery drivers. Contractor will be responsible for contacting the secure location for security clearance procedures, hours of operation for deliveries and service, dress code, and other rules of delivery. These security clearance procedures may vary from facility to facility. Deliveries that are delayed due to drivers not being cleared to enter institutional grounds may cause the contractor to be declared in default of contract requirements.
5.	**Free on Board (F.O.B.) Destination (Shipping Terms)** All prices offered shall be F.O.B. destination, freight prepaid by the Contractor, to the Purchasing Entity's final receiving point. Responsibility and liability for loss or damage for all orders shall remain with the Contractor until final inspection and acceptance, when all responsibility shall pass to the ordering organization, except the responsibility for latent defects, fraud, and the warranty obligations. All emergency or rush deliveries that require special shipping and handling should be at the ordering entities expense, with prior approval from the Purchasing Entity. Emergency or rush shipping charges shall be added to an invoice as a separate line item. In the event an emergency or rush delivery is required as the result of a Contractor's error; all shipping cost shall be paid by the Contractor.
6.	**Manufacturer Warranty** Contractor must honor all manufacturers' warranties and guarantees on all products offered as part of the Master Agreement. If a product warranty extends beyond the term of the Master Agreement, the Contractor must agree to provide warranty services throughout the life of the warranty. These parts must be warranted to be free of defective parts and workmanship, provided they are properly installed on the vehicle for which they were intended, for the time and mileage shown in the product literature or catalog. Statement of warranty is to be provided by Contractor with items delivered under this Master Agreement. For all items ordered, warranty begins on the date of delivery.

Item	Description
7.	**Return Policy** Items purchased under this Master Agreement may be returned at no cost for a full refund if item is unused, in its original packaging and within thirty (30) calendar days of delivery. All returns shall be picked up within seven (7) business days of notification. Notification is defined as notice in writing, by facsimile or e-mail.
8.	**Credit Policy** The Contractor shall offer a full credit/refund for the following items: • Items shipped in error • Defective or freight-damaged items • Items returned within 30 calendar days of delivery In all cases, the Purchasing Entity shall have the option of taking an exchange, receiving a credit, or receiving a refund. The Contractor will be responsible for the credit/refund or replacement of all products, including those covered by manufacturer warranties as stated in Exhibit A, Section 6.F.6, Warranty. Contractor cannot require the Purchasing Entity to deal directly with the manufacturer.
9.	**Product Recall Procedures** Contractor shall provide recall notification, regardless of level, in writing to the Lead State Contract Administrator and each applicable Purchasing Entity through the most expedient method possible. The notices, at a minimum, shall include a complete product description and/or identification, contract number, delivery order number and disposition instructions. Contractor agrees to use commercially reasonable efforts in identifying the applicable manufacturer in order that the Lead State and any Participating Entities or Purchasing Entities may work with such manufacturer to handle any applicable recall issues.

G. Invoicing and Payment

Item	Description
1.	**Invoices** Invoices shall be submitted to the Purchasing Entity within seven (7) calendar days from date of delivery. Invoices should include the following at a minimum: • Agency Order Number (Purchase Order Number) • Purchasing Entity Name • Delivery address of the order • Product(s) description • Manufacturer's product(s) number(s) • Quantities of merchandise issued • Price(s) per unit(s) and extended price • Date ordered • Date delivered • Listing of returns or back ordered items • Discounts (i.e. Cash Discounts, Prompt Payment • Totals for each order. Each invoice shall have a total for all orders, a total for all credits, and amount due from each agency • Any other mutually agreed upon requirements
2.	**Payment** California state agencies and local government agencies may pay by check, electronic funds transfer, or with the State of California purchase card (CAL-Card). Payments are to be made in accordance with paragraph 30 of the Lead State's General Provisions (Exhibit C). Purchasing Entities may pay by check, electronic funds transfer, or by a State Purchasing card (P-card). The Contractor will be solely responsible for the credit card user-handling fee associated with credit card purchases. Participating States and Entities may have their own payment terms which will be identified within individual Participating Addendums.
3.	**State of California CAL-Card Invoicing** For orders paid through CAL-Card, invoices are to be processed separately from other payment methods and submitted to the CAL-Card

Item	Description
	account holder. For additional information, visit the CAL-Card Program website (https://www.dgs.ca.gov/cal-card). The total invoice amount for each order paid by CAL-Card must reflect a zero balance due or credit, if applicable, and identified as "paid by CAL-Card".

H. Reporting

Item	Description
1.	**Usage Report (Lead State)** During the term of the Master Agreement, Contractor shall submit usage reports on a quarterly basis to the Lead State Contract Administrator for all California Purchasing Entity sales using the report template provided by the Lead State Contract Administrator. Usage Report will contain the following data elements at a minimum: • Ordering Agency Name • Agency Type (State/Local) • Purchase Order Number • Order Date • Category • Manufacturer Part Number (OEM #) • Item Description • Unit of Measure • Quantity • List Price/MSRP • Unit Price • Extended Price Paid • Catalog Version Date The Lead State Contract Administrator reserves the right to modify the reporting template and require Contractor to provide additional order information during the course of this Agreement. The report shall be an Excel spreadsheet transmitted electronically to PDCooperatives@dgs.ca.gov. The report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected

Item	Description
	reports within five (5) business days of the date of written notification from the State. Tax must not be included in the report, even if it is on the purchase order. Reports are due by the 30th day following a calendar quarter. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of the Master Agreement. Amendment for term extensions may be approved only if all quarterly reports due have been submitted to the Lead State. The Lead State Contract Administrator will provide the reporting template upon award.
2.	**Participating State/Entity Reporting** Contractor must provide usage reporting to Participating States and Entities as defined in the individual Participating Addendum.
3.	**NASPO ValuePoint Summary and Detail Usage Reports** Contractor shall submit specific summary and detailed usage reports directly to NASPO ValuePoint as set forth in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D). The Lead State Contract Administrator will provide the Detail Usage Report template upon award.
4.	**Ad Hoc Reporting** Contractor shall have the ability to provide ad hoc reports at no cost to the Lead State. Upon written request, Contractor shall permit and provide access to all data that pertains to any procurement action taken by a Purchasing Entity or Participating Entity as a whole. The Lead State or Purchasing Entity may make copies of procurement data in any form and the use of such data shall not be restricted. Dependent on future reporting requirements, the Lead State may ask that certain reports become standard and delivered to the Lead State on a monthly or quarterly basis.
5.	**Lead State Administrative Fee** Contractor shall remit a quarterly Lead State administrative fee of 1.25 percent of all goods purchased by California Purchasing Entities for each reporting quarter. Prices submitted shall not reflect the California administrative fee. The Lead State administrative fee shall not be

Item	Description
	invoiced or charged to the ordering agency and is specific to California only. This fee will be due to the Lead State on the 30th day following the ending of the quarterly reporting period. Payment of the Lead State administrative fee is due irrespective of payment status on orders or service contracts from a Purchasing Entity.
6.	**NASPO ValuePoint Administrative Fee** Contractor shall remit a NASPO ValuePoint administrative fee as specified in Section V of the NASPO ValuePoint Master Agreement Terms (Exhibit D).
7.	**Participating Entity Administrative Fee** If a Participating Entity requires an administrative fee, each fee will be negotiated and articulated in the individual state's Participating Addendum.

I. Management and Customer Service

Item	Description
1.	**Contractor Responsibility** Contractor shall be responsible for successful contract performance of the Master Agreement and successful performance of any and all of their subcontractors. Contractor agrees to comply with requirements under the Master Agreement, even if requirements are delegated to subcontractors. All Lead State policies, guidelines, and requirements apply to subcontractors. The prime Contractor and subcontractor(s) shall not in any way represent themselves in the name of the Lead State without prior written approval. Furthermore, the Lead State will consider the prime Contractor to be the sole point of contact with regard to contractual matters, payments, warranty issues, for the term of the Master Agreement and any extensions. Use of subcontractors will be addressed within each state's Participating Addendum.

Item	Description
2.	**Lead State Contract Administrator** The Lead State Contract Administrator will be the contact person for issues relating to the Master Agreement. Any modifications to the requirements contained in the Master Agreement may only be authorized by the State Contract Administrator or his/her designee through Master Agreement Amendment.
3.	**Contractor Contract Manager** Contractor will assign a contact person for contract management purposes. The Contractor Contract Manager must be authorized to make decisions on behalf of the Contractor.
4.	**Changes in Contract Manager** Contractor must notify the Lead State Contract Administrator of Contractor Contract Manager changes in writing within 10 calendar days of the change.
5.	**Contractor Name Change** An amendment is required to change the Contractor's name as listed on this agreement. Contractor shall notify the Lead State of any name change. Upon receipt of legal documentation of the name change the Lead State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
6.	**Customer Service Unit** Contractor will have a customer service unit that supports this Master Agreement. The customer service unit shall provide office and personnel resources for responding to inquiries, including telephone and email coverage weekdays during business hours. The customer service unit shall be staffed with individuals that: • Are trained in the requirements of this contract • Have the authority to take administrative action to correct problems that may occur • Are designated for training and general customer service follow-up Contractor shall respond to customer inquiries within one (1) business day of initial contact. Prior to Master Agreement award, Contractor shall provide customer service information to the Lead State within five (5) business days of written request.

J. Transition / End of Agreement

Item	Description
1.	**Transition Plan at End of Contract** Contractor agrees that at the end of this Master Agreement, should the Lead State conduct another procurement and award a new Master Agreement, the Contractor will work with the Lead State Contract Administrator, if requested to ensure that an efficient and effective transition takes place. Upon termination or expiration of the Master Agreement the following will occur: • All on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website. • Customer data/user accounts acquired during the term of the contract shall be destroyed or returned to the Lead State at the request of the Lead State Contract Administrator. • No references to the Master Agreement shall be made after contract end on the Contractor's commercial website without permission by the State Contract Administrator. • All invoicing disputes and/or order tracking will be conducted through the Contractor's Customer Service Unit via telephone or email.

K. Environmentally Preferable Purchasing

The following requirements are specific to the State of California and may be incorporated within Participating Addenda at the Participating Entity's discretion.

Item	Description
1.	**Environmentally Preferable Purchasing (EPP)** California Department of General Services is responsible for the implementation of EPP as mandated by the California Public Contract Code (PCC), Chapter 6, sections 12400-12404. Contractor certifies the products or services offered comply with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms (PCC Section 12404).
2.	**Post-Consumer Recycled Content (PCRC) Certification** California state agencies are required to report purchases made within eleven (11) product categories in the California Department of Resources Recycling and Recovery's (CalRecycle), State Agency Buy Recycled

Item	Description
	Campaign (SABRC) in accordance with Public Contract Code sections 12200-12217.In order to comply with those requirements, Contractor will be required to certify in writing the minimum percentage, if not the exact percentage, of post-consumer recycled content (PCRC) material in each of the products ordered, upon request.
3.	**Green Product Marking and Labeling** Contractor shall identify products that possess third party environmental certifications on the Electronic Catalog.
4.	**Wheel Weights** California law prohibits the manufacture, sale, or installation of wheel weights containing more than 0.1% lead. California Health and Safety Code Section 25215.6-25215.7 (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25215-6.html).
5.	**Mercury Containing Products** A person cannot sell or distribute for promotional purposes, in California, certain types of new or refurbished products and devices that contain mercury. This law can be found in Health and Safety Code, Division 20, Chapter 6.5; Mercury-Added Thermostats, Relays, Switches, and Measuring Devices (Sections 25214.8.1-25214.8.6). (https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-25214-8-4.html).
6.	**Consumer Products** Contractor may not sell, supply, offer for sale, or manufacture for sale in California consumer products that do not comply with the Consumer Products Regulatory Program, whose aim is to reduce the amount of volatile organic compounds (VOCs), toxic air contaminants (TACs), and greenhouse gases (GHGs) that are emitted from using chemically formulated consumer products. Background information including enforcement of the program can be found at: https://ww2.arb.ca.gov/our-work/programs/consumer-products-program/about. Regulations for the program can be found in Article 2: Regulation for Reducing Emissions from Consumer Products, commonly referred to as the General Consumer Products Regulation.
7.	**Brake Friction Material** All motor vehicle brake friction materials sold in California must meet the requirements as identified in California Health and Safety Code Section 25250.51 (Source: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=20.&chapter=6.5.&lawCode=HSC&article=13.5

L. Generative Artificial Intelligence (GenAI) Reporting

The following requirements are specific to the State of California only.

Item	Description
1.	**Generative Artificial Intelligence (GenAI) Reporting** The State of California seeks to realize the potential benefits of GenAI, through the development and deployment of GenAI tools, while balancing the risks of these new technologies. Upon request by an ordering agency, Contractor must complete a GenAI Reporting and Fact Sheet (STD 1000) to identify if their solution or service includes, or makes available, any GenAI including, GenAI from third parties or subcontractors. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the GenAI Reporting and Factsheet (STD 1000) to notify the State of any new or previously unreported GenAI technology. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief to which it may be entitled to as a result of such non-disclosure. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or terminate any contract that presents an unacceptable level of risk to the State. If Contractor identifies GenAI in their solution, a copy of the STD 1000 must be submitted to the State Contract Administrator.

EXHIBIT B: CATEGORY DISCOUNTS

Category	Description	Percent Discount Off MSRP
1	Air Conditioning	62%
2	Alternators and Starters	64%
3	Batteries	64%
4	Bearings, Ball and Roller	67%
5	Belts and Hoses	60%
6	Brakes	68%
7	Electrical and Ignition	62%
8	Emission, Sensors and Exhaust	62%
9	Engine and Drive Train	62%
10	Filters, Oil, Gas, Air and Transmission	71%
11	Gaskets and Seals	65%
12	Heating and Cooling (Engine)	62%
13	Lamps, Lighting and Mirrors	62%
14	Oils, Chemicals, Fluids and Lubricants	62%
15	Pumps, Fuel and Water	65%
16	Suspension, Shocks, Struts and Steering	65%
17	Wipers/Washers	77%
18	Winter Accessories	60%
19	General Automotive Parts (Aftermarket Automotive Parts not included in Categories 1-18.)	62%
20	Automotive Repair Shop Supplies and Equipment/Tools (e.g., cleaning supplies, wrenches, etc.)	30%

EXHIBIT C: LEAD STATE GENERAL PROVISIONS

Non-IT General Provisions (6/21/2022) is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at: https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts?search=model%20contract

These terms are applicable for State of California purchases only.

EXHIBIT D: NASPO VALUEPOINT MASTER AGREEMENT TERMS

I. Definitions

1.1 **Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.

1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.

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

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

1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.

1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

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

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

1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (*e.g.*, ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).

1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.

1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.

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

II. Term of Master Agreement

2.1 **Initial Term.** The initial term and extension options for this Master Agreement is listed in Section 2 of Exhibit A, Scope of Work.

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

2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

3.1 **Order.** The following order of precedence shall apply for Orders executed by Purchasing Entities:

3.1.1 A Participating Entity's Participating Addendum ("PA");

3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;

3.1.3 A Purchase Order issued against the Master Agreement;

3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

3.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

3.3 **Participating Addenda.** Participating Addenda will not be construed to dimmish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

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

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

4.3 **Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and 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.

4.4 **Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.

4.5 **Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

4.6 Eligibility for a Participating Addendum. Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Entities should coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

4.7 Prohibition on Resale. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

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

4.9 Release of Information. Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.

4.10 No Representations. The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

V. NASPO ValuePoint Provisions

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

5.2 Administrative Fees

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

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

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

5.3.1 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://calculator.naspovaluepoint.org. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

5.3.2 Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, *e.g.* local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and

line item description, including product number if used. The report must 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 following the end of the calendar quarter. Reports must be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports must include sales information for all sales under Participating Addenda executed under this Master Agreement.

5.3.3 Reporting on Personal Use. 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 ((state and agency, city, county, school district, etc.) under whose authority the employee is purchasing Product for personal use 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.

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

5.3.5 Use of Data. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports will 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.

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

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of

NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

5.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

5.4.3 Annual Contract Performance Review. Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.

5.4.4 Use of NASPO ValuePoint Logo. The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.

5.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions provided to another competing cooperative. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

5.5 Cancellation. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Master Agreement or not exercise an option to renew, when utilization of Contractor's Master Agreement does not warrant further administration of the Master Agreement. The Lead State may also exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two (2) years after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.

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

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

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

VI. Pricing, Payment & Leasing

6.1 Pricing. The discounts contained in this Master Agreement represent the minimum discount to any Purchasing Entity.

6.1.1 All discounts must be guaranteed for the entire term of the Master Agreement, including extension years.

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within forty-five (45) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

6.3 Leasing or Alternative Financing Methods. The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

VII. Ordering

7.1 Order Numbers. Master Agreement, Participating Addendum, and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

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

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

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

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

7.5 **Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.

7.5.1 Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.

7.5.2 Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.

7.5.3 Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

7.5.4 Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.

7.5.5 Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

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

7.6.1 The services or supplies being delivered;

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

7.6.3 A billing address;

7.6.4 Purchasing Entity contact information;

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

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

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

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

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

VIII. Shipping and Delivery

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

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

8.2 **Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.

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

8.4 **Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each

shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

IX. Inspection and Acceptance

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

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

9.3 Inspection. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

9.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

9.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

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

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

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

9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

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

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

X. Warranty

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

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

10.3 Breach of Warranty. Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.

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

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

XI. Product Title

11.1 Conveyance of Title. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.

11.2 Embedded Software. Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

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

XII. Indemnification

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

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

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

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

12.2.1.2 specified by the Contractor to work with the Product;

12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been

avoided by substituting another reasonably available product, system or method capable of performing the same function; or

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

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

12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.

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

XIII. Insurance

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

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

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

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

13.3.2 Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

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

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

13.5 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

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

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

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

XIV. General Provisions

14.1 Records Administration and Audit

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

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

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

14.2.1 **Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

14.2.1.1 Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is

confidential information of Purchasing Entity ("Confidential Information").

14.2.1.2 Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information.

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

14.2.2 **Non-Disclosure.** Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement.

14.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

14.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

14.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

14.2.3 **Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

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

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

14.3 Assignment/Subcontracts

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

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

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

14.5 Independent Contractor. Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.

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

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

14.8 Defaults and Remedies

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

14.8.1.1 Nonperformance of contractual requirements;

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

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

14.8.1.4 Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

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

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

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

14.8.3.1 Any remedy provided by law;

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

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

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

14.8.3.5 Suspension of Contractor's performance; and

14.8.3.6 Withholding of payment until the default is remedied.

14.8.4 Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and

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

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

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

14.11 No Waiver of Sovereign Immunity

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

14.11.2 This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of

immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

14.12 Governing Law and Venue

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

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

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

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

12621Amendment1NASPO-FactoryMotor

Final Audit Report 2024-10-24

Created:	2024-10-23
By:	bernadette connor (bernadette.connor@des.wa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAotKfoTZSPnzr-wgM1tDBTbg4FVqJ2kVz

"12621Amendment1NASPO-FactoryMotor" History

Document created by bernadette connor (bernadette.connor@des.wa.gov)
2024-10-23 - 10:55:25 PM GMT

Document emailed to d.carney@fmpco.com for signature
2024-10-23 - 10:57:00 PM GMT

Email viewed by d.carney@fmpco.com
2024-10-23 - 10:57:41 PM GMT

Signer d.carney@fmpco.com entered name at signing as Dana Carney
2024-10-23 - 10:58:10 PM GMT

Document e-signed by Dana Carney (d.carney@fmpco.com)
Signature Date: 2024-10-23 - 10:58:12 PM GMT - Time Source: server

Document emailed to Michellee Jemmott (michellee.jemmott@des.wa.gov) for signature
2024-10-23 - 10:58:14 PM GMT

Email viewed by Michellee Jemmott (michellee.jemmott@des.wa.gov)
2024-10-24 - 0:16:19 AM GMT

Document e-signed by Michellee Jemmott (michellee.jemmott@des.wa.gov)
Signature Date: 2024-10-24 - 0:16:39 AM GMT - Time Source: server

Agreement completed.
2024-10-24 - 0:16:39 AM GMT

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